



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



In the matter of:)
)
) ISCR Case No. 09-03890
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

12/13/2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, 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 April 29, 2009 and September 8, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on June 15, 2012, 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; Department of Defense 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 June 27, 2012, and answered it on July 6, 2012. Applicant requested a hearing before an administrative judge, which DOHA received. Department Counsel was prepared to proceed on October 23, 2012, and I received the case assignment on October 26, 2012. DOHA issued a Notice of Hearing on the same date, and I convened the hearing as scheduled on November 15, 2012. The Government offered exhibits (GE) marked as GE 1 through GE 10, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE E, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 27, 2012. I held the record open until November 29, 2012, for Applicant to submit additional matters. Applicant timely submitted AE F - AE I, which were received and admitted without objection. The record closed on November 29, 2012.

Procedural Ruling

Notice

Applicant received the hearing notice on November 8, 2012, less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived his right to the 15-day notice. (Tr. 10)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.j, and 1.l of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.k 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.

Applicant, who is 40 years old, works as a technical support specialist for a Department of Defense contractor. He began his current employment in September 2000. His performance evaluations for the last nine years reflect that he generally meets the requirements of his duties. His most recent evaluation describes him as dependable and very knowledgeable in his work areas and reflects that he has taken leadership roles with a goal to become a supervisor. He provided two letters of

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).

recommendation. Both individuals describe him as a responsible individual. One letter also describes him as conscientious, friendly, honest, and helpful, and the other states that he has a good work ethic. He has received several team and individual job awards.²

While a high school student, Applicant enlisted in the United States Army Reserves, where he served for two years. Applicant graduated from high school in 1990. In 1991, he began four years of active duty in the Army. He received an honorable discharge in 1995. He and his wife married in 1996, and they have a 15-year-old son, a 13-year-old daughter, and a 4-year-old son. His wife suffers from multiple sclerosis and does not work. Applicant attended college periodically, but has not received a degree. He did receive technical training in 2000, which provided him with the skills for his current employment.³

While in the Army, Applicant purchased a 1994 Ford Probe. After his discharge from the Army, he experienced a period of unemployment, and this car was repossessed. He eventually found work as a corrections officer. To improve his employment opportunities at the corrections department, he voluntarily moved to a larger metropolitan area, which caused an increase in his rent and other expenses, but not his income, making it difficult for him to pay all his bills, including a high interest car loan on a Mazda. As a result, he filed for Chapter 13 bankruptcy in January 1998. He paid the \$275 monthly payment until June 1999, when he asked for a reduction in his monthly payment because his work income had declined \$400 a month. The court agreed to reduce his payment to \$200 a month. Several months later, the Mazda was totaled in an accident. After the insurance paid the car loan in full, he decided to dismiss his bankruptcy as he could now pay his bills. The court dismissed his Chapter 13 bankruptcy petition on December 27, 1999. He resumed paying his past-due debts, which he resolved.⁴

Applicant's income varies because when programs end, he is transferred to another program at a different rate of pay. He works more overtime hours in some programs than he does in other programs. These fluctuations in his income impact his ability to pay all his monthly expenses. In 2003, a change in work assignment created a financial crisis. He resolved most of his debt issues from this time. However, the change in work assignments with fluctuating pay, continues to periodically impact his ability to pay all his debts. He missed one or two mortgage payments, but the mortgage company worked with him to catch up the arrearage. His mortgage payments are up to date. His current, unpaid debts are a result of program and income changes.⁵

²AE A - AE C.

³GE 1; GE 2; AE A; Tr. 36-38, 40.

⁴GE 4; GE 5; Tr. 82-84.

⁵Tr. 41.

Applicant's current gross monthly base income totals \$4,618. His pay stubs reflect that he earns between 3.5 and 7 hours of overtime, although on two separate occasions, he earned more overtime. His net monthly income averages \$4,008 a month, which is the amount he uses for his budget. Some months, he receives extra income. His monthly expenses total \$3,968 and include approximately \$640 in debt payments and \$360 in school loan debt. He drives a 10-year-old car and does not have a car loan.⁶

In his response to the interrogatories propounded to him by the Government, he advised that he had contacted several of his creditors, paid several small debts, and set up a payment plan with one creditor. In January 2012, Appellant retained the services of a debt settlement company. Through this company, his past-due debts will be paid by March 2016. Initially, his plan covered 12 debts, including the debts identified in SOR allegations 1.c through 1.h.⁷ Since January 2012, three additional small debts have been added to his plan, and these creditors appear to be debt collectors. The documents do not show what debts are owned by these debt collectors. The creditor for his \$12,000 debt (SOR ¶ 1.e) has changed. The company would not include his two student loan debts in its plan.⁸

Applicant has made the \$248 monthly payment to the debt settlement company each month since January 2012. The debt resolution company sends a letter to each creditor in an effort to negotiate a settlement of the debt owed by Applicant. The debt collection company report reflects this activity as "In-Progress". Once it negotiates a settlement, the debt company begins paying on the negotiated settlement amount until the debt is paid, and its fee for settling the debt is paid. The debt company documentation reflects the status of a payment as "Active". Once a debt is paid, the debt company documents show the debt as "Paid". Debts which are not being negotiated or paid are noted as "Inactive". The monthly progress documents from the debt settlement company show that it has paid the \$903 debt in SOR ¶ 1.f and that it is paying the negotiated settlement on the \$2,382 debt in SOR ¶ 1.d. The debt settlement company has paid three small non-SOR debts totaling \$1,913 to credit collection companies or businesses. Applicant's hearing testimony reflects that he believes these debts relate to medical bills for lab work, which he never received. The information in the record does not indicate the name of the original creditor for these accounts, making it impossible to make a comparison with the SOR debts. Under his payment plan, most

⁶AE H; AE I; Tr. 55-56. See GE 3 with earlier income and expense statements and pay stubs.

⁷The SOR identified 11 purportedly continuing delinquencies as reflected by credit reports from 2010, 2011, and 2012, totaling approximately \$20,000. 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.

⁸GE 3; AE D; Tr. 53-54.

SOR debts will be paid rapidly, except for the \$12,000, which will take some time to resolve.⁹

Applicant wrote a letter to the creditor in SOR allegation 1.i, offering to settle the \$846.13 student loan debt for \$85. At the hearing, he stated that he meant \$85 a month. He did not receive a response to his offer. Applicant called the creditor in SOR allegation 1.j to discuss a payment plan to settle this \$1,800 school loan debt. He was not successful in his efforts. The May 23, 2012 credit report does not contain a listing for SOR debts 1.f through 1.k. Except for SOR allegation 1.g, the October 24, 2011 creditor report does not contain a reference to these debts.¹⁰

On cross-examination, Applicant testified that he believed two old debts, not listed on the SOR, were the same and that he had resolved the debts. After the hearing, Applicant determined that these two debts were not the same and made arrangements with the creditor for the unresolved debt to pay his debt at \$50 a month. He provided proof that he made the first \$50 payment.¹¹

Applicant denied owing the \$779 debt in SOR allegation 1.k in his response to the SOR. At the hearing, he acknowledged that this was his debt after researching it. After the hearing, Applicant called the debt collection company listed in the SOR as the holder of the debt. The debt collection company informed him, that because the debt had been disputed, it returned the debt to the original creditor on March 23, 2011. The debt collection company refused to provide this information in writing. Applicant called the original creditor, which advised Applicant that it sold the debt to another debt collection company on March 31, 2011. The May 23, 2012 and November 15, 2012 credit reports do not show a debt with the creditor or a collection company. The debt is not shown on the three most recent credit reports with a new creditor.¹² The amount of the debt in dispute differs from the debt identified in the SOR. Applicant has not had financial or credit counseling.¹³

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

⁹GE 10; AE D; AE E; Tr. 70-75.

¹⁰GE 3; GE 9; GE 10; Tr. 52-53.

¹¹AE F; Tr. 61-64.

¹²The credit reports do show a small collection account for a similar type debt, which is paid and disputed. GE 9; GE 10; AE E.

¹³GE 10; AE E - AE G; Tr. 49-50, 54.

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.

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; and
- (c) a history of not meeting financial obligations.

Appellant developed significant financial problems when he lost income and incurred unexpected expenses. He has difficulty paying all his bills when unexpected expenses occur. Most of the debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline 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:

- (a) 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;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.¹⁴

¹⁴The Appeal Board has explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires

Applicant's SOR debts are more recent and not as a result of unusual circumstances. Thus, AG ¶ 20(a) does not apply. The fluctuation in Applicant's pay rate and overtime hours are factors beyond his control. While the loss of overtime hours is not within his control, overtime hours are not a guarantee. Thus, relying on overtime as constant income for his lifestyle is within his control. AG ¶ 20(b) is partially applicable.

Applicant has not received financial or credit counseling. However, in January 2012, he retained the services of a debt settlement company to help him pay his past-due debts. All his SOR debts, except the two education loans, are contained in the repayment plan developed by this company. Applicant has made his \$248 monthly payment each month since January 2012. The debt settlement company has paid four debts and is paying a fifth debt for him. While not all of the paid debts are listed in the SOR, SOR debts are being paid. The debt settlement company is working, on Applicant's behalf, to resolve all his existing debts, except the two student loans. Applicant made an offer to settle one school loan, but did not receive a response, because his offer letter did not state that he intended to pay monthly until the debt was resolved. He is paying a very old debt that he thought was paid. Finally, he unsuccessfully attempted to contact the holder of his other school loan. By retaining the debt settlement company, Applicant has taken control over his past-due debts and through this company, he is making a good faith effort to resolve the debts. He has established a payment track record with this company, and his budget reflected a track record of paying his other monthly expenses. AG ¶¶ 20(c) and 20(d) apply.

Applicant initially denied the debt in SOR allegation 1.k., then agreed at the hearing this debt belonged to him. He contacted the creditor after the hearing and learned that this creditor had returned the debt to the original creditor more than 20 months earlier because it was disputed. This debt is not on the last three credit reports creditor. At this time, all the evidence indicated that Applicant does not owe any money to the creditor identified in this allegation. AG ¶ 20(c) applies to this debt.

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

a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(Internal citation and footnote omitted) ISCR Case No. 02-30301 at 3 (App. Bd. Apr. 20, 2004)(quoting ISCR Case No. 99-9020 at 5-6 (App. Bd., June 4, 2001)).

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.¹⁵ After he left military service, Applicant lacked income for a period of time. He married in 1996 and started his family soon after. His income fluctuates, creating problems paying his bills at times. In the past, he worked to resolve his debts, whether on his own or through a Chapter 13 bankruptcy procedure. His income fluctuations, over which he has no control, continue to create periodic problems with paying his bills, particularly when

¹⁵ 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.

unanticipated bills occur. He fell behind in mortgage payments, but he caught up his arrearage with the cooperation of the mortgage company. He not only has a plan to pay the current SOR debts, but he pays \$360 a month on school loans and makes monthly payments on other debts as shown in his financial statement. Through his payment plan, he has resolved four small debts and is currently resolving a larger SOR debt. Most of his SOR debts should be resolved quickly, leaving the one large debt to be resolved over the long-term. He pays his current living expenses. He has three children and an ill wife, who is unable to work. Financial stresses will remain given the fluctuation in his income. He is working to gain better control of his expenses. He has a track record for resolving debts. Most significantly, he has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) 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).)

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
Subparagraphs 1.a - 1.l:	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