



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



In the matter of:)	
)	
)	ISCR Case No. 09-04335
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

July 16, 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 signed his Electronic Questionnaire for Investigations Processing (e-QIP) on March 3, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on March 8, 2010. 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 March 17, 2010. He submitted a notarized, written response to the SOR allegations dated March 31, 2010, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on June 3, 2010. Applicant received the FORM on June 10, 2010. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response with attachments dated June 24, 2010. DOHA assigned this case to me on July 6, 2010. The Government submitted nine exhibits, which have been marked as Items 1-9 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b-1.k of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.a of the SOR.¹ After a complete and thorough review of the evidence of record, I make the following additional findings of fact.²

Applicant, who is 40 years old, works as an engineering technician 1 for a Department of Defense contractor. He began his employment in February 2009. Applicant and his co-workers recently completed a major project for which they received high praise from their customers.³

Applicant married in 2004. His wife had three children, who are now ages 15, 14, and 7, from a previous marriage. Applicant and his wife have two children, ages 4 and 2. Applicant's three stepchildren also live with him. The record does not reflect that his wife receives child support for her three children.⁴

Applicant was born and raised in the southeast. For many years, he worked in the hotel industry, and in particular, from 1995 until November 2005, he worked in various positions in the hotel industry in the southeast. In November 2005, he and his family moved west to be closer to his wife's family. He worked part-time from December 2005 until May 2006 as a night auditor for a motel chain. He then worked full-time as a

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).

²Item 4.

³Item 1; Response to FORM.

⁴Item 4.

customer service representative for three months, when he left the job because he was unsatisfied and the company was unsatisfied with his performance. After one month of unemployment, he obtain another customer service job with a federal contractor in September 2006. He left this job in January 2007 to accept a better paying full-time position with a national hotel chain. The company laid him off in May 2008, following a change in management. After three months of unemployment, he accepted a job as a car salesman just as car industry sales declined in the economic downturn. By January 2009, he had received an offer for his present position. He also attends college part-time.⁵

Applicant lost income when he moved from the southeast to the west. Jobs in the hotel industry paid less in the west than in the southeast. When he first arrived in the west, he worked part-time. Six months later he obtained full-time employment and continued to work full-time for two years. From December 2005 until January 2007, he and his family lived with family friends. Since January 2007, they have lived in their own home.

Applicant earns \$2,900 in gross monthly income and \$2,600 in net monthly income. He also receives an additional \$250 a month in income from an unexplained source. His monthly expenses total \$2,400. With five children, his food expense is underestimated at \$350. His monthly food expense should be at least \$500. Based on these estimates, he has a remainder of \$300 a month to pay his debts.⁶

Applicant incurred back taxes when he worked a second job and did not have the appropriate taxes withheld from his pay. He not only owed the \$545 in state taxes listed in SOR allegation 1.a, but he also owed an additional \$3,377 in state taxes. He has paid all his past due state taxes.⁷

In his answers to interrogatories, dated August 29, 2009, Applicant showed that he had paid a \$3,000 education loan. He acknowledged that the Government applied his tax refunds to this debt, but he did not explain if he also made monthly payments. The November 2, 2009 credit report indicates that he paid two education loans of more than \$3,000, which had been in collection. He also indicated that he repaid family who helped with his expenses during times of unemployment, but did not verify these payments or the amounts.⁸

⁵Item 4; Response to SOR.

⁶Item 7.

⁷Response to SOR.

⁸*Id.*; Item 9.

Applicant stated in his answers to interrogatories that he paid the debt listed in SOR allegation 1.g. This debt is not listed in the credit reports dated July 15, 2009 and November 2, 2009. I find that this debt is paid.⁹

Applicant acknowledged a credit card with the creditor identified in SOR allegation 1.f. He made regular payments on this debt until he stopped his payments in February 2006. The creditor charged this account off in the amount of \$471. The creditor in SOR allegation 1.c is a collection agent. The credit reports reflect that the collection agent opened this account in March 2008 with a high credit balance of \$471 and a collection balance of \$551, now \$586. Applicant stated that the accounts are the same, and I so find.¹⁰

In his interview with the investigator, Applicant denied any knowledge of the \$2,227 debt identified in SOR allegation 1.h. The March 14, 2009 credit report shows that this account is actually two accounts which belonged to another creditor and were sold by the original creditor. This account does not appear on the July 15, 2009 and November 2, 2009 credit reports. The status of this account is unknown, although Applicant admitted owing the money in his response to the SOR.¹¹

Although he admitted owing the debts in SOR allegations 1.i and 1.k, Applicant denied owing both debts during his investigation interview. When he met with the investigator, Applicant indicated that he had paid the \$93 debt many years earlier and that he continued to hold an account with the cell phone creditor in 1.i, which does not reflect any overdue amount. He did not provide any documentary evidence to show he either paid or disputed the \$93 debt, or to indicate his cell phone account is current.¹²

Applicant admitted owing the following SOR debts: \$939 (1.b), \$9,107 (1.d), \$987 (1.e), and \$607 (1.j). He advised the investigator that he was trying to develop payments plans or settlements for these debts. He has not provided any information about his efforts or shown that he has made any payments on these debts.¹³

The three credit reports of record reflect that Applicant pays his current bills, including a car payment. He does not have a current credit card or any unpaid current bills. He defaulted on the \$9,107 debt in August 2008, after he was laid off.¹⁴

⁹Item 6; Item 7; Item 9.

¹⁰Item 5, Item 6; Item 8.

¹¹Item 1; Item 3; Item 5; Item 6; Item 9.

¹²Item 3; Item 8.

¹³*Id.*

¹⁴Item 5; Item 6; Item 9.

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.

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 in 2006 and in 2008. He has been unable to pay some of 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 problems occurred in 2006 and 2008. His debts are too recent for this mitigating condition to 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 after he moved from the southeast to the west in 2005. He quickly obtained a part-time job, but did not find a full-time job for almost six months. This job did not pay as much income as he earned in the southeast, nor did a later job. Just over a year after he moved, he found a job in the hotel industry, earning a reasonable salary. After a change in management 17 months later, he was laid off. It took him three months to find a job, which was a position as a car salesman. The serious decline in the economy in 2008 severely impacted his ability to earn money at this job. The decline in the economy, unemployment, and underemployment are factors beyond his control. From the fall 2005, when he moved west, until January 2007, he and his family lived with family friends, which saved on living expenses. Neither his part-time job nor his first full-time jobs in the west provided sufficient income for him to pay all his expenses. He continued to seek better paying jobs, which he thought he found in January 2007. During all this time, Applicant did not acquire additional credit cards or other credit to

meet his monthly expenses. Under the circumstances in which he found himself, he acted reasonably. This mitigating condition applies in this case.

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 provided no evidence that he received financial counseling. He has resolved some of his delinquent debts and his current bills are paid monthly. This mitigating conditions partially applies.

AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant resolved his tax debt after contacting the state revenue department and he paid the \$296 debt in SOR allegation 1.g through a payment plan he established. This mitigating conditions applies to the debts in SOR allegations 1.a and 1.g only as Applicant has not shown that he is using the \$300 a month income remainder to pay off his debts as he told the investigator he would do.¹⁵

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 the nexus between established facts and a legitimate security concern has been mitigated.

¹⁵AG ¶¶ 20(e) and 20(f).

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.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a responsible individual as shown by his willingness to assume the responsibility for supporting three children when he married. He paid his monthly living expenses and credit card bills until after he moved west. With a growing family, he and his wife made a decision to move closer to her family for support.

With this move, he encountered difficulty finding full-time employment. He worked part-time for six months, then at an unsatisfactory full-time job. Applicant sought and obtained other jobs, each with the goal of increasing his income. He returned to the hotel industry in early 2007, but was laid off about 17 months later, just when the economic downturn started. For the next seven months, he either did not work or worked as a car salesman, making little income. His finances were seriously impacted by his lack of employment and income.

Applicant has worked steadily at his current job. He supports a family of seven on \$38,000 a year, leaving little money to pay past debts. He pays his current expenses and does not use credit cards to finance an extravagant lifestyle. His documentation and credit reports reflect that in recent years, he paid more than \$10,000 in education

loans and tax debt. He also resolved three smaller debts, two listed in the SOR and the other in a credit report.

However, 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 a grant. He still owes approximately \$14,000 in old debts. He plans to repay these debts, but he has not established a payment plan with any of the creditors. Despite having approximately \$330 of discretionary income each month, he has not shown that he has a plan to pay these debts, even one at a time. I am unable to assess if he has a realistic and credible repayment plan or schedule for his remaining debts. Although he is not required to pay all his old debt before he can hold a security clearance, he needs to show some form of a repayment schedule for his debt or provide documentary evidence of his negotiations with creditors on repayment of his debt. His unpaid debts are significant and outweigh the positive factors in this case.

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:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	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