



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



In the matter of:)	
)	
)	ISCR Case No. 09-04631
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

April 27, 2010

Decision

HENRY, Mary E., Administrative Judge:

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

Applicant signed his Security Clearance Application (SF 86) on December 21, 2006. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on October 9, 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 November 3, 2009. He answered the SOR in writing, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 14, 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 22, 2010. The Government offered eight exhibits (GE) 1 through 8, which were admitted into evidence without objection. Applicant testified on his own behalf. He did not submit any exhibits. DOHA received the transcript of the hearing (Tr.) on March 16, 2010. I held the record open until March 15, 2010, for Applicant to submit additional matters. Before the deadline, Applicant requested an additional 30 days to obtain the requested information. On March 19, 2010, I issued an order extending the date for Applicant to submit additional evidence until April 15, 2010. He submitted 22 documents, including fax cover sheets, exhibits (AE) A through S, which were admitted, without objection. The record closed on April 15, 2010.

Procedural and Evidentiary Rulings

Notice

At the hearing, Applicant indicated he received the hearing notice, but was unsure of the date. 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. 8.)

Findings of Fact

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

Applicant, who is 37 years old, works as a theater manager² for a Department of Defense contractor. Applicant graduated from high school in 1991 and began a shipbuilding apprenticeship. He completed his apprenticeship in 1995 and worked in the shipbuilding industry for two years. In early 1998, he moved to another state, where he obtained employment as a machine craftsman. In the summer of 2006, employees of this company went on strike, leaving Applicant out-of-work. By late September 2006, Applicant obtained another job as an engineering technician with a Department of Defense contractor. His new employer deployed him to Iraq in November 2006. While in

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).

²Applicant stated that his job title was theater manager. His job title is a term of art. He trains members of the United States Army on how to identify and handle improvised explosive devices.

Iraq, his employer promoted him to theater manager. Shortly thereafter, he accepted his current position. He returned from Iraq in January 2008.³

Applicant married in 1995. He and his wife have a son, age 12, and a daughter, age 8. His children attend private school, with a monthly tuition cost of \$375.⁴

In 1997, Applicant and his wife purchased a house for \$106,000, with a monthly mortgage of \$985. Within the first year, they fell behind in their mortgage payments. Their bills overwhelmed them and they filed a Chapter 13 bankruptcy petition. With the assistance of the bankruptcy trustee, they developed a repayment plan. They complied with the terms of the repayment plan and the bankruptcy court discharged their debts in March 2001.⁵

The Chapter 13 bankruptcy plan included two debts to a credit union when Applicant worked for the shipbuilding company. Applicant purchased a car in October 1995 through this credit union, a debt which was resolved under his Chapter 13 wage earners plan. He also obtained a personal loan for \$7,300 in July 1996, which is shown on his Chapter 13 list of debts with a remaining balance of \$5,500. This credit union received notice of the bankruptcy proceeding and the discharge of his debts in 2001. The record contains no other evidence of debts owed to this credit union. Thus, I find that the \$3,615 debt in allegation 1.k is the same as the \$5,500 debt listed in his Chapter 13 bankruptcy petition and has been discharged.⁶

Applicant fell behind in his mortgage again in 2005 or 2006, which he related to the strike at his job in 2006. Applicant entered into a loan forbearance plan with the mortgagor in late 2007 while he was deployed in Iraq. Under the terms of the mitigation plan, he agreed to pay \$5,666 as an initial payment and \$1,200 a month. Applicant paid the initial payment in January 2008 and has verified the payment. He paid \$1,200 in February 2008 and a second payment in April 2008.⁷ The account records of the mortgagor reflect that this money was not applied to Applicant's account balance. Applicant requested further verification on how his money was applied and has not received an explanation, only a printout of his account. When he learned that the mortgagor had not applied his more than \$8,000 in payments to his debt, Applicant ceased making payments on his mortgage. The mortgagor suggested a second

³GE 1; Tr. 16-18.

⁴GE 1; Tr. 18, 56.

⁵GE 2; Tr. 19, 24-25.

⁶GE 2; GE 3; GE 5; AE B; Tr. 22-24.

⁷Applicant's hearing testimony suggested that these payments took place in 2007 not 2008. The mortgagor records show a later date.

forbearance plan and requested another \$10,000 from Applicant. He declined the offer because of the previous problems with the mortgagor.⁸

Applicant and his family moved out of the house after the problems with his mortgage payments because he did not want his family to be without housing should the property go to foreclosure. He and his wife purchased a second house. They made a small down payment and paid \$2,000 on their mortgage for the first year. They made the last payment in December 2009. His monthly mortgage payment is now \$800 a month.⁹

Applicant listed his first house for sale in early 2009. On February 16, 2010, he signed a sales contract with a real estate investor. The investor offered to purchase the house for \$95,000, and the offer with related paperwork has been submitted to the mortgagor for approval as a short sale. Applicant understands that if the mortgagor does not accept this offer, the purchaser intends to make a second offer for \$108,000. Applicant believes the property in this area sells for between \$140,000 and \$150,000. He also believes his debt to the mortgagor is around \$152,000 without accounting for his \$8,000 payments. He does not believe he will owe any money to the mortgagor once the sale is completed. The property taxes are current on this property.¹⁰

Applicant currently earns \$7,083 a month in gross pay,¹¹ and his net monthly income totals \$5,028. His current monthly expenses total \$3,775, leaving \$1,253 a month to pay other bills. Applicant completed paying for a \$30,000 car in January 2010, making an additional \$780 a month available. Applicant's credit reports indicate that he timely pays his large debts, except the disputed mortgage, and does not have any credit card debts. Outside of his mortgage debt, his credit report reflects unpaid small debts.¹²

While in Iraq, Applicant earned a significant salary. He acknowledged earning \$130,000 initially and ultimately \$170,000 a year. Of these amounts, he paid income tax on \$90,000. He used his money to pay debts from his unemployment because of the company strike and to pay other debts. Applicant attributes his debts, in part, to bills which were not paid by his wife when he worked overseas, and to medical bills he believed his health insurance carrier should have paid.¹³

⁸GE 5; GE 6; GE 7; GE 8; AE D; AE M; Tr. 27-29, 46-47, 51-52.

⁹AE G; Tr. 43-44.

¹⁰AE D; AE I; Tr. 29-31.

¹¹Applicant is paid every two weeks. Two months a year, he will receive an extra pay check.

¹²GE 5; GE 6; GE 7; GE 8; AE F; AE G.

¹³Tr. 19, 40-41, 49-50.

Applicant contacted a credit repair company to help with a resolution of his debts. The company advised that it would challenge the debts, seeking to have the debts removed from his credit reports. If it was unsuccessful, he would still be responsible for paying the debts. This company required a \$450 fee. He did not hire the company, nor did he seek financial counseling. He has paid most of the small debts listed in the SOR.¹⁴

After reviewing the credit reports dated December 22, 2006, April 10, 2009, June 22, 2009, September 18, 2009, and the SOR, I have compiled a list of the total debts owed, excluding any duplicate entries. I find that Appellant's actual debts are as follows:¹⁵

SOR ¶	TYPE OF DEBT	AMOUNT	STATUS	EVIDENCE
1.b	Medical bill	\$ 64.00	Paid	AE H
1.c	Medical bill	\$ 61.00	Paid	AE H
1.d	Medical bill	\$ 50.00	Paid	AE H; AE J
1.e	Utility bill	\$ 121.00	Paid	AE H; AE P
1.f	Medical bill	\$ 676.00	Unable to locate creditor	AE H
1.g	Medical bill	\$ 196.00	Paid	AE H; AE O
1.h	Mortgage debt	\$ 35,392.00	Contract pending	AE I
1.i	Medical bill	\$ 153.00	Paid	AE H; AE S
1.j	Medical bill	\$ 33.00	Paid	AE E
1.k	Personal loan	\$ 3,615.00	Included in bankruptcy	GE 5; AE 5; Tr. 22-24
1.l	Medical bill	\$ 443.00	Paid	GE 5; GE 7; GE 8; Tr. 34
1.m	Telephone bill	\$ 446.00	Resolution unclear, current owner of debt not clear	GE 5; AE K

¹⁴Tr. 32, 60.

¹⁵GE 5 (Credit report, dated December 22, 2006); GE 6 (Credit report, dated April 10, 2009); GE 7 (Credit report, dated June 22, 2009); GE 9 (Credit report, dated September 18, 2009).

1.n	Medical bill	\$ 38.00	Unable to locate creditor	AE H
1.o	Medical bill	\$ 120.00	Paid	AE H

Applicant provided a letter from a credit collection agent, which stated that on the instruction of another company, the three credit reporting companies will be informed and requested to delete from his credit reports a debt in the amount of \$446.45. This letter does not state that the bill is for the telephone bill in allegation 1.m. The amount is the same, but the account numbers are different.¹⁶

Applicant's project officer and project manager praise his work skills and leadership. Applicant is a dependable, trustworthy, and dedicated employee. Because he was extremely effective in Iraq in working with improvised explosive devices (IED), his employer established a mobile training team in the United States with Applicant as its lead. Both respect him and consider him a valuable asset to the company.¹⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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.

¹⁶AE K.

¹⁷AE Q; AE R.

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 of his obligations for a period of time. 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 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 financial worries have been an ongoing problem since 2006. They are recent and not the result of unusual circumstances. 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.” In 2006, Applicant’s company ceased daily operations when its employees went on strike, causing the loss of work and income for Applicant. Instead of waiting for the strike to end, he found new employment with a better salary. He acted responsibly by seeking employment elsewhere and not waiting for the strike to end. This mitigating condition partially 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). While Applicant has not received financial counseling, he developed a forbearance plan with his mortgagor and paid over \$8,000 to the mortgagor. However, the mortgagor did not apply this money to his debt, although it acknowledged receiving the money. He listed this property for sale and has a

purchaser. The sales contract has been presented to the mortgagor, who is currently reviewing the offer. Applicant paid the majority of his small medical debts. Two medical creditors could not be located and these bills are not paid. The personal loan was discharged in his bankruptcy action and it appears that the unpaid telephone debt may be resolved. Applicant's current finances are under control. He pays his mortgage and one car payment. He paid the loan on another car. This mitigating condition applies.¹⁸

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 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's financial problems first developed in 1997 and 1998 when he assumed more financial responsibility than he could manage. He decided to file for Chapter 13 bankruptcy protection. He complied with the payment plan developed and three years later the court discharged his debts. Since completing his bankruptcy plan, he has not relied on credit cards to finance a life style.

¹⁸AG ¶¶ 20(d), 20 (e), and 20(f) are not applicable in this case.

Applicant's financial problems remained small until his coworkers went on strike in 2006. He did not have savings to pay his bills during a strike. Without his income, he could not pay his bills, including his mortgage. He sought and obtained other employment, which required him to deploy to Iraq, where he spent 14 months. He used his significant income from this job to pay overdue bills and regular bills. Not all his bills were paid during this time. He saved some money, but not a lot. He developed a forbearance plan with his mortgagor, which he believed would resolve his mortgage debt problem. He paid more than \$8,000 toward his arrearage, but his mortgage company did not properly credit his payments. Instead of paying more money into a financial abyss, he decided to move from his home. His decision not to continue paying his mortgage when the mortgagor was not crediting his account is appropriate. The mortgagor had an obligation to place his payments in his account and if not, to explain to him why it was not doing so. His mortgagor provided no explanation for its action. A reasonable person would not pay money to a creditor, if the creditor was misappropriating or misplacing the payments. Applicant showed good judgment in not giving additional money to this mortgagor until the issue of what had happened to his payments was resolved. The issue of this money is not yet resolved. However, the house has a purchase contract which has been submitted to the mortgagor. Applicant is now awaiting approval of the contract from the mortgagor. He anticipates that once the house is sold, his debt will be resolved in full.

Although Applicant has not completely resolved all his debts, he has a plan in place to resolve his largest debt, his mortgage debt on his first house. He found a purchaser, accepted the contract offer, and forwarded the contract to the mortgagor for approval, which has not yet been given. He can not do more. He must wait for a decision from the mortgagor. He resolved the remaining debts in the SOR, except for two debts. He cannot find the creditor for these unidentified medical bills. Applicant has accepted responsibility for his debts. He refused to retain a credit repair company which suggested that he dispute the medical bills he owed with a goal to have the debt removed from his credit report. He chose to pay the bills recently.

Applicant's supervisor and manager praise him. They describe his skills as valuable to the company. He performed exceedingly well in Iraq and his employer asked him to continue with the same duties in the United States. He is married and has two children. He has focused his attention on providing a stable domestic environment for his family. 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 yet completely resolved his mortgage debt; however, he has a purchase contract on the property and is waiting to hear from the mortgagor about its acceptance of the contract. Because the purchaser is an investor, he expects the sale will proceed. 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, as Applicant does not live beyond his financial means nor does he use credit cards to finance a lifestyle. (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
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

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