



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



In the matter of:)	
)	
)	ISCR Case No. 09-06308
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

May 20, 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 Electronic Questionnaire for Investigations Processing (e-QIP) on May 6, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on October 13, 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 October 20, 2009. He answered the SOR in writing on November 2, 2009, and requested a hearing before an administrative judge. DOHA received the request on November 3, 2009. Department

Counsel was prepared to proceed on November 5, 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 three exhibits (GE) 1 through 3, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted eight exhibits (AE) A through H, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on March 15, 2010. I held the record open until March 16, 2010, for Applicant to submit additional matters. Applicant submitted Exhibits AE I through AE TT by the March 16, 2010 deadline.¹ Department Counsel forwarded the documents to me on April 28, 2010 without objection. The record closed on March 16, 2010.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice on February 9, 2010. (Tr. 8.) At the hearing, 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. (*Id.* at 7.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.d-1.g of the SOR, with explanations. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.b and 1.c of the SOR.² 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 28 years old, works as an electronics technician for a Department of Defense contractor. He began his current employment in April 2009. After his 90-day probationary period, his supervisor recommended him for regular employment on July 27, 2009. His supervisor and a co-worker describe him as loyal,

¹At the hearing, Applicant submitted AE A through AE H, but did not bring copies. These documents were admitted into evidence. He made copies of these exhibits and submitted the copies post-hearing. He also presented a document, which was marked as AE I, but not admitted into evidence. He resubmitted this document, which is included as part of AE I.

²When 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).

reliable, well-organized, perceptive, self-motivated, professional, and of strong character. They believe him to be a valuable asset and recommend him for continued employment. A long-time friend describes Applicant as a loyal friend, reliable co-worker, and trustworthy. He states that based on his personal observation, Applicant does not take short cuts in his work and never compromises the quality of his work. He also believes Applicant is a valuable member of their team.³

Applicant, a United States citizen by birth, resided in U.S. territories with his family for several years as a teenager. In 1998, at age 17, he left high school before graduation and moved back to the continental United States with his parents, who were ill and financially distressed. He started working to help support his family. He met his fiancée in 2001. They live together and have two children, a daughter, who is 7 years old, and a son, who is 3 years old. He is the sole support of his immediate family and provides some financial assistance to his parents.⁴

About nine years ago. Applicant tore a ligament and destroyed the cartilage in his knee playing basketball. At this time, he worked at a dry cleaning establishment, earning \$6 to \$7 an hour and did not have medical insurance. He tried to treat the injury on his own, as he lacked the money to pay for the medical care. When he returned to work, he could not stand all day, and he lost his job. Because he did not obtain the necessary medical care, he could re-injure the knee by simply tripping while walking. His knee injury caused him to miss time from work after each re-injury, and the lost work time resulted in job loss. Several years later, he received the needed medical treatment through an organization, which also tested his skills and training. Through this organization, he received his truck driver's license.⁵

Applicant worked at various low-paying jobs to support his family. Five years ago, Applicant obtained a contract job with a private company. With this job, he worked from one to six months at a time and 15 to 130 hours a week, depending upon the work assignment and work availability. When employed, he worked long hours and earned a good salary. In between assignments, he worked other jobs, which paid lower salaries, often at minimum wage or just above. In 2008, one interim job required him to work in Iraq, where he spent two months. When he did not work, he collected unemployment. His irregular employment impacted his ability to pay his bills and debts. He started his current job a year ago and has worked steadily. His employer recently assigned him to a new job location for a year. He anticipates earning significantly more income in this locale, and expects his increased income will help pay his old debts, as well as pay his living expenses.⁶

³GE 1; AE A; AE B; AE C; AE D.

⁴GE 1; Tr. 21-22, 29, 36.

⁵Tr. 21-22, 29, 32-35.

⁶*Id.* 22-24, 27-32, 55, 61-67.

In 2005, Applicant agreed to purchase his sister's house. He and his family moved into her house and began paying the agreed-upon monthly mortgage payment. After a period of time, his sister reneged on their agreement. She cut off the utilities to the house, forcing his family to move. He filed a civil action against her, and the court awarded him a judgment for approximately \$13,000. His sister has never paid him the money owed and he has not sought to enforce the judgment against her, as she is a family member.⁷

Applicant purchased a house in 2007. To qualify for his mortgage, he paid \$3,000 in debts. He paid \$1,100 a month as his mortgage payment. By early 2008, he got behind in his monthly payments. He borrowed money from a friend to help with his payments. When he returned from Iraq, he repaid this friend the \$3,000 he borrowed.⁸ Applicant again experienced problems paying his mortgage because of his irregular employment. He applied for a mortgage loan modification, which has been approved. His new monthly mortgage payment is \$930.⁹

After his knee surgery, Applicant began working as a driver and sales person for a national bread company. Shortly after beginning his employment, he injured his wrist in a car accident, making it difficult to lift the bread trays. As a result, he lost his job. He then could not afford his monthly car payment and returned the car. He owes \$6,567 on this car debt (SOR ¶ 1.g). He contacted the creditor, with his last contact occurring in May 2009. The creditor requested a lump sum payment of \$3,000 or two payments of \$1,400 each. Applicant requested to make smaller monthly payments, which the creditor refused. Applicant did not have the money for the large payments, unless he did not pay his regular monthly expenses.¹⁰

Applicant purchased a 1999 Dodge Durango from a used-car dealer, where he had previously purchased a vehicle without difficulty. Applicant paid \$5,200 for the Durango by trading another vehicle, which the used car dealer valued at \$1,000, a \$500 credit, and a \$3,700 car loan. Two days later, major mechanical problems developed with the Durango. Applicant returned with the vehicle to the used-car dealer, who refused to honor any warranties on the car. Applicant discussed the problem and his options, including any rights under state lemon laws, with the loan company; then, he returned the car. Applicant still owes \$3,700 on this debt (SOR ¶ 1.f). Applicant contacted this creditor and offered to make small monthly payments on his debt. The creditor rejected this offer and made a counteroffer of \$500 a month for six months.

⁷*Id.* 67-70.

⁸This friend wrote a letter of recommendation for Applicant. AE B.

⁹AE E; AE U; Tr. 36.

¹⁰Tr. 55-57.

Applicant declined, as he lacked sufficient income to make a large monthly payment and pay his regular monthly living expenses for his family.¹¹

In November 2009, someone stole his car, then burned it, causing a total loss and leaving him without transportation. After his insurance paid for this loss, he still owed \$1,200, which he repays at the rate of \$45 a month. He bought a small truck from an uncle and paid for it. He also owns a 2004 minivan and he pays \$200 a month on his \$191 monthly payment.¹²

Applicant paid the debt in SOR allegation 1.a on October 23, 2009. Applicant disputed the debts listed in SOR allegations 1.b and 1.c on October 21, 2009, with Equifax credit reporting company because the debts belonged to his father. Equifax deleted the debts from its report as of October 30, 2009. The September 29, 2009 credit report from another credit reporting company shows these debts as unpaid and one disputed after resolution. I find that these debts are resolved.¹³

Applicant filed his tax returns each year, after submitting information to tax preparers. Because he held numerous jobs in many years, he did not always provide all the 1099 forms he received for small jobs. He thought he had given all the information to the tax preparer, but he later learned he had not. All of his income earnings information, however, had been provided to the Internal Revenue Service (IRS) and the State tax office. His tax problem began in 2005 and resulted in an under-payment of taxes for the years 2005, 2006, and 2007. Applicant first received a tax deficiency notice in 2006. He thought his 2007 tax refund would pay this debt. It did not. The IRS determined that he owed additional taxes for each of these years and filed two tax liens against his house in November 2008 for \$6,335 and \$726 respectively. When he learned about the tax liens, Applicant contacted the IRS for information. IRS advised that any tax refunds in the future would be applied to his tax debt. The IRS also told him that if he could not afford a monthly payment, the debt would accrue interest and penalties, and would be repaid from the sale of his house in the future. Following receipt of the SOR, Applicant contacted the IRS in October 2009 and developed a repayment plan. He started paying \$165 a month to the IRS in December 2009. He hired a new tax preparer for his 2009 tax returns. His 2009 tax return reflects that he will receive a refund of \$7,368, which will be applied to his tax debt of \$8,405 (as of February 10, 2010). This debt includes interest and penalties for these three years. Applicant also filed an amended tax return for 2008 through his tax preparer, which showed a refund of \$877. With these refunds and his February 2010 payment, Applicant will have paid his federal tax debt in full.¹⁴

¹¹Tr. 51-54, 56, 78-80.

¹²AE S; AE U; Tr. 37, 94.

¹³Response to SOR; GE 3; AE E.

¹⁴GE 2; GE 3; AE G; AE H; AE Z; AE AA-AE DD; AE HH; AE JJ-AE RR; Tr. 40-48, 84-88.

Applicant not only owed additional taxes to the IRS, he also owed additional taxes to the State. The State tax office determined that Applicant owe \$2,115 in back taxes. Applicant agreed to repay these taxes at \$65 a month beginning on November 28, 2009. Applicant has made the required payments and reduced this debt by \$260. The payment is automatically withdrawn from his checking account.¹⁵

Applicant paid some, but not all, overdue debts during the time when his income improved. His credit reports indicate he paid past due debts. He recently paid for his truck and a vacuum cleaner. He makes more than the monthly minimum payment on his current credit cards. He earns \$2,703.20 in monthly gross income and \$2,331 in net monthly income plus per diem income, which can be as much as \$2,000 in a month. His monthly expenses total \$2,576 and include his tax payments. Since his federal tax debt is paid, his monthly expenses are now \$2,411 a month. With his per diem, Applicant has sufficient income to pay his monthly expenses.¹⁶

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 relevant and 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,

¹⁵Response to SOR; GE 1; AE F; AE K-AE P; AE EE; AE II; Tr. 47-49, 88-89

¹⁶AE H; AE R; AE T; AE U-AE X; AE SS; Tr. 24, 37-39.

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.

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 delinquencies arose sometime ago and are continuing. 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 because of sporadic employment, irregular work hours, unemployment, and low income jobs for the last 10 years. Five years ago, he began employment with a contract company. Although he received a good salary, his work hours and length of work varied. When he was not working for this company, Applicant sought other employment, working when he could and for low salaries. When his income improved, he paid some of his past debts. He could not pay all his debts, as he needed to provide housing and food for his children. He made decisions about what he could pay and needed to pay. He acted responsibly in seeking additional employment and paying some of his bills under the circumstances in which he found himself. This mitigating condition is applicable 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 has not received financial counseling. He, however, has resolved one SOR debt, one of his tax debts, and is resolving his other tax debt. 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 relied upon the IRS advice that if he could not pay his tax debt, the debt would be paid when his house was sold. When he received the SOR, he realized his unpaid tax debts were a problem and contacted the IRS and the State tax office. He made arrangements to pay these debts through a payment plan. His current finances are under control and his income is stable since he is working regularly. I conclude these mitigating conditions are partially applicable.

Applicant may also mitigate security concerns under AG ¶ 20(e) “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 challenged two debts because he believed the debts belonged to his father. After investigation, Equifax agreed and removed the debts from his credit report. This mitigating condition applies to SOR allegations 1.b and 1.c.

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.

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 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. At age 17, Applicant left school to help support his ill parents. Without his education and because he was young, Applicant obtained minimum-wage jobs. He sought to improve himself by applying for and obtaining better paying employment. He eventually received his truck driver's license, which enabled him to improve his employment opportunities. He has struggled to provide housing and food for his children and family. When he was not employed, he made the choice to feed and house his children over paying his other bills. When his income improved, he paid some of his past due debts.

Over the years, he has resolved several delinquent debts. He contacted the taxing authorities and worked out a resolution of his tax debts. His federal tax debt is fully resolved. One car debt resulted from the slick business practices of the used-car dealer, who refused to honor warranties on the Durango. He attempted to develop repayment plans with the creditors who own the car-loan debts. Both creditors refused to accept a monthly payment; rather these creditors required a large payment, which if made, would have resulted in other unpaid debts, such as his mortgage. He always made choices to protect his family. Applicant plans to resolve the two remaining debts with the money he will earn at his new work assignment.¹⁷

While he has not paid all his debts, these 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. He is not required to be debt free to hold a security clearance. Applicant has demonstrated financial responsibility through his debt payment and financial support of his family. He has learned from his past mistakes. His supervisors consider him reliable and trustworthy. He is a hard worker and has always tried to find employment to provide for his family and pay his bills. While some debts remain unpaid, they are insufficient to raise security concerns because Applicant has shown the ability to resolve debts one at a time, and has established a track record for doing so. Thus, his intent to resolve his remaining two debts with his increased earnings is credible. (See AG ¶ 2(a)(1).) Applicant has shown that he can be trusted to comply with the rules for handling classified information.

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.

¹⁷Under Appeal Board law, promises to pay debts in the future are not evidence of mitigation.

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

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