



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



In the matter of:)
)
) ISCR Case No. 09-06602
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

November 8, 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 May 18, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on May 11, 2010, detailing security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance. 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 May 13, 2010. He answered the SOR in writing on May 27, 2010, and requested a hearing before an administrative

judge. DOHA received the request on June 1, 2010 and Department Counsel was prepared to proceed on June 24, 2010. I received the case assignment on July 6, 2010. DOHA issued a notice of hearing on July 15, 2010, and I convened the hearing as scheduled on August 4, 2010. The Government offered four exhibits (GE) 1 through 4, which were received and admitted into evidence without objection. Applicant testified. 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 August 19, 2010. I held the record open until September 3, 2010 for Applicant to submit additional documents. Applicant timely submitted exhibits AE I through AE L, without objection. The record closed on September 3, 2010.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice on July 26, 2010, less than 15 days before the hearing. (Tr. 9.) 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.*)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.e of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.f and 1g of the SOR¹ 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 51 years old, works as a test technician for a Department of Defense contractor. He began this employment in March 2002, after retiring from the United States Air Force. He enlisted in the Air Force in February 1977 and received an honorable discharge in January 1983. He re-enlisted in the Air Force in April 1987 and retired in May 2001 after 20 years of service. He retired as a master sergeant at a pay grade of E-7. He received numerous medals and awards while in the Air Force, including the Air Force Commendation Medal with two Oak Leaf Clusters, the Air Force Achievement Medal, the Air Force Outstanding Unit Award with four Oak Leaf Clusters,

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).

the Air Force Good Conduct Medal with three Oak Leaf Clusters, the National Defense Service Medal, and other awards. During his 20 years in the Air Force, Applicant held a security clearance without incident.²

Applicant married in 1989 and has two children, a son who is 22 years old, and a daughter, who is 17 years old. He and his wife separated from May to December in 2007. He rented a room for \$400 a month during this time.³

While in the Air Force, Applicant completed two associate degrees. He returned to college in January 2008 and anticipated completing a bachelor's degree in applied science and project management in December 2010.⁴

When he retired from the Air Force, Applicant received retirement pay. He planned to use this pay to pay his credit card debts and living expenses until he settled in a job. He accepted a job paying \$13 an hour with his current employer. His salary did not allow him to proceed with his plan to pay his credit cards, which he believed "maxed out" in 1999 while he was still in the Air Force. He continued to pay the monthly payments on his credit cards, without adding additional personal charges, until 2007.⁵

In July 2006, his employer directed him to work about 400 miles from home or face unemployment. The employer provided housing and a small per diem while he worked away from home. Thus, he did not incur any additional out of pocket expenses while working out of town. When he returned from this work assignment, he discovered that his son had driven his car without permission and been involved in a car accident, which damaged the car. His automobile insurance company refused to pay the damages. At the same time, he received a \$7,000 check in the mail from a lending company. He understood that if he deposited the check, it would be a loan. Since he needed money to pay for the car repairs and to rent a car, he deposited the check. He paid the loan until 2007, when he could no longer make the payments. The creditor later obtained a judgment against Applicant in the amount of \$7,844, which he repays through a garnishment of his pay. He pays \$52.85 a paycheck, which began about a year before the hearing. As of July 31, 2010, he had paid \$792.75 in 2010 on this judgment. At the hearing, he estimated that he paid about \$1,200 on this debt. Based on his estimate, he paid approximately \$400 on the debt in 2009.⁶

When he retired from the Air Force, Applicant rented an individually-owned house through a realty company in December 2001. In July 2004, the owner started an

²GE 1; AE F; Tr. 55.

³GE 1; Tr. 20-21, 34-35.

⁴*Id.*

⁵Tr. 34-36.

⁶AE J; Tr. 21-24.

eviction process against him, even though his rent had been paid each month. Applicant encountered difficulties finding a house to rent. The court extended him time to locate new housing. In September 2004, the owner refused to accept his rent check and proceeded with the eviction, so his daughter could live in the house. Applicant submitted his rent payment to the court until the matter was resolved. The court entered judgment against Applicant in the amount of the rent due for the month of September, and directed the clerk of the court to forward payment of the escrowed rent to the owner of the house. Applicant moved out of the house by the end of October 2004, after locating another place to live. The judgment in SOR ¶ 1.f is paid in full.⁷

Applicant purchased a house in 2005. The mortgagor required him to pay a \$2,644 debt, which he did. Applicant believes this creditor is the same creditor as listed in AE B and in SOR ¶ 1.g. Applicant called the telephone number listed on the June 5, 2009 credit report, p.6, for the creditor in SOR ¶ 1.g. The person who answered the telephone spoke the name of the creditor in AE B. Applicant looked at p.7 of this credit report and noticed that the creditor in AE B, a paid debt, had the same address and telephone number as the creditor in SOR ¶ 1.g. The creditor's representative verbally verified that the creditor in SOR ¶ 1.g is a billing service, which turned the debt over to the creditor in AE B. He confirmed that the debt had been paid in full, but refused to provide Applicant with a letter indicating the same. Applicant testified credibly at the hearing and has provided consistent information about his debt problems. I find his testimony and statement about this debt credible. The debt in SOR ¶ 1.g is paid.⁸

The four remaining SOR debts totaling approximately \$40,000 are not paid, and Applicant has not contacted these creditors to repay his debt. His only plan is to pay the debts in the future when his income improves. He expressed a desire to resolve his debts in "an honorable fashion" when his finances improve.⁹

Applicant contacted a credit counseling service in July 2010 for assistance with resolving his debt. The company requested a monthly payment of \$776, which was significantly higher than he could pay. He did not hire this company.¹⁰

Applicant's gross monthly income averages \$2,927 without overtime. His net monthly pay averages \$2,143.¹¹ He receives \$1,417 a month in military retirement benefits for a total monthly income of \$3,560. His monthly expenses total approximately \$3,204, leaving approximately \$356 for debt payment. The monthly remainder is recent,

⁷GE 2; AE A; AE K; Tr. 27-28.

⁸GE 3; AE B; AE I; Tr. 30-31.

⁹Tr. 37-38, 40-41.

¹⁰AE E; Tr. 40.

¹¹Applicant rarely works overtime since he attends school. He is paid every two weeks, which results in three paychecks two months out of the year. AE J.

as Applicant made his last car payment at the end of April, saving \$200 a month in expenses. He also reduced his car insurance by \$100 a month. Applicant's wife works, but does not contribute to the household expenses. She does pay for her car, its related expenses, and her clothes. His son works and pays for his car, its expenses, and his clothes.¹²

Applicant inherited a small amount of money from his mother. He used this money to pay for his first semester of college. His employer reimbursed him when he completed the semester. Each semester, he pays the tuition and book costs, and his employer reimburses him when he completes his course work. His employer requires him to remain in its employ for one year after graduation. If not, he must repay his employer the costs of his education.¹³

In 2007, Applicant and his wife decided to file their income taxes separately. As a result, he owed an additional \$3,000 in taxes, which he paid with his inheritance and refunded tuition. Because of their tax filing method, he also owes an additional \$1,200 in taxes for 2009. He has a payment plan with the Internal Revenue Service (IRS) and is paying \$40 a month on this debt.¹⁴

Applicant submitted two letters of recommendation. His supervisor and a security employee at his job describe him as a responsible, reliable and dependable employee. Both state he is trustworthy, but neither indicate any knowledge of his financial issues.¹⁵

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.

¹²AE J; AE L; Tr. 46-50.

¹³Tr. 38, 43.

¹⁴Tr. 39.

¹⁵AE G; AE H.

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 under this guideline 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 especially the following:

19(a) inability or unwillingness to satisfy debts.

19(c) a history of not meeting financial obligations.

Appellant developed significant financial problems while he was in the military. He steadily made payments toward the satisfaction of these debts until he and his wife separated in 2007. Currently, the debts remain unresolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and especially the following:

20(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.

20(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.

20(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.

20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant testified that he fell behind in his debts in 1999. However, he continued to make monthly payments on these debts until 2007. His default on these debts is recent. AG ¶ 20(a) is not applicable in this case.

Applicant's inability to pay his debts occurred when he and his wife separated in May 2007. At this time, he rented a room for \$400 a month and paid the regular expenses of his family home, leaving him with little money to continue payments on his credit cards and other indebtedness. AG ¶ 20(b) is only partially applicable because Applicant has not taken any action to resolve these debts and has not shown that he acted reasonably under the circumstances.

AG ¶ 20(c) applies to the debts in SOR ¶¶ 1.a, 1.f, and 1.g. Applicant contacted a credit counseling agency, but since he could not afford the recommended monthly payment, he did not hire them. Applicant pays monthly, through garnishment, on the judgment obtained against him by the creditor in 1.a. He has paid the debts in ¶ 1.f and ¶ 1.g. His monthly bills are paid and he complies with his agreement to pay the additional taxes owed to the IRS for 2009.

Applicant has not contacted his creditors to develop a payment plan for his debts. He has not taken any action to resolve his remaining debts. He has not challenged the legitimacy of these unpaid debts; rather he acknowledges these are his debts. AG ¶¶ 20(d) and 20(e) are not applicable.¹⁶

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 reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served honorably in the Air Force for 20 years. He received numerous awards for his military service and never mishandled classified information. Applicant incurred significant debt while in the Air Force. After he retired, he continued to pay on this debt and did not increase the level of this debt. In 2004 and 2005, he resolved two SOR debts. He acquired a \$7,000 loan in 2006 when he deposited a \$7,000 check, which he paid for a period of time. He stopped his debt payments when he and his wife separated in 2007. With the additional expense of renting a room when he was separated, he could not continue to pay his credit card bills. Since this time, he has not contacted any of his creditors to establish a payment plan for his debts, nor does he have a plan to do

¹⁶AG ¶ 20(f) is not raised in this case.

so until he has money available at an unspecified time in the future. At this time, the majority of his debts are unresolved.

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

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