



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



In the matter of:)	
)	
)	ISCR Case No. 09-08320
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

August 26, 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 September 22, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on March 17, 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 20, 2010. He answered the SOR in writing on March 23, 2010 and requested a hearing before an administrative judge. DOHA received the request on April 15, 2010, and Department Counsel was

prepared to proceed on April 27, 2010. DOHA assigned the case to me on April 30, 2010. DOHA issued a notice of hearing on May 7, 2010, and I convened the hearing as scheduled on May 27, 2010. The Government offered four exhibits, (GE) 1 through 4, which were received and admitted into evidence without objection. Applicant and one witness testified on his behalf. He submitted two exhibits (AE) A and B, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on June 16, 2010. I held the record open for Applicant to submit additional matters. Applicant timely submitted 19 exhibits, C through T, without objection. The record closed on June 28, 2010.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.b through 1.l of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in SOR ¶ 1.a.¹ He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 28 years old, works as a senior systems administrator for a Department of Defense contractor. He began this position a year ago. He graduated from high school and has training in information technology. He is single.²

In 1999, Applicant started a sole proprietorship business designing web sites. From this business, he developed a side company, another sole proprietorship, which was an online computer hardware store. He operated his two businesses online. In 2002, he opened a storefront computer hardware business, which he developed into a computer café business. The business performed well. He looked for financing to purchase a building for his business. His family purchased a building, where he relocated his business, which continued to grow.³

By 2006, Applicant was engaged. He and his fiancée decided to form a corporation for his business. He owned 51% and she owned 49% of the corporation. They incorporated his computer café and expanded it to include a cafeteria-type eating

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).

²GE 1; Tr. 15.

³Tr. 15-16.

area and some beer sales. They incorporated the business in February 2006. The business performed well until the economy started to decline. By September 2008, his relationship with his fiancée had deteriorated and their engagement ended. She withdrew from the business, giving him 100% ownership of the business. By 2009, the decline in business made it difficult for him to pay all the expenses related to the business. He decided to close the business, and throughout May 2009, he sold the business assets for \$14,115.⁴

When he established the corporation, the corporation could not obtain credit solely in its name. He personally guaranteed the credit cards and lines of credit obtained for the corporation. He used the credit cards and lines of credit to purchase necessary supplies, food, computer software, and computer materials for the business. He paid these bills until business declined. He used the proceeds from the sale of the business to pay expenses related to the business and to purchase a used car for his former fiancée and business partner, so that she had transportation to find a job.⁵

Applicant and his fiancée did not pay themselves a salary from the business. Each took about \$3,000 a year from the business to cover their personal expenses, previously paid by the business. During the time they operated the corporation, Applicant and his fiancée lived with his parents, which saved them living expenses, except gasoline and a few other small expenses. In June 2009, Applicant moved from his parents' home because he anticipated obtaining a job near where he moved.⁶ He and his fiancée were talking about reconciling, and she did not want to live with his parents.⁷

Applicant closed his business on June 1, 2009. Shortly thereafter, he met with a bankruptcy attorney because of his business debts. He decided not to file bankruptcy, choosing instead to pay his debts as he could. The attorney recommended a plan for repaying his debts. The attorney suggested he save his money and pay one debt at a time. The attorney provided advice on how to contact the creditors with settlement offers. The attorney also gave Applicant advice which would preserve his credit score and ability to purchase a car, if necessary.⁸

Applicant did not work from June 1, 2009 until August 24, 2009 when he started his current job. His parents provided him \$2,000 in the summer of 2009 to help pay his

⁴AE D; Tr. 16-18, 56-57.

⁵AE D; Tr. 18-19, 56, 63-69.

⁶He did not get this job. His current job is located further away. Tr. 20-21.

⁷AE N to AE T; Tr. 19-20, 45-46.

⁸Tr. 27-28, 41-42.

expenses. He also used income from the sale of his business to pay some of his expenses while he was unemployed.⁹

Applicant earns \$3,254 in gross monthly income and \$2,422 in net monthly income. His monthly expenses total \$1,960, including \$800 for rent,¹⁰ \$650 for food, \$200 for utilities, \$85 for cell phone, \$80 for gasoline, \$125 for cable and internet, and miscellaneous of \$100. He did not include the cost of car insurance, which I estimate at \$70 a month. He has approximately \$460 a month left to pay his debts. He moved six months ago to a house closer to his place of work. This move saves him time and \$130 a month in gasoline.¹¹

Since he began his current employment, Applicant repaid his parents the \$2,000 they loaned him in the summer of 2009. He used his recent tax refund to pay the \$1,800 balance on his only credit card. He now pays any balance charged on this card in full each month. This varied payment is not included in his monthly expenses. At the hearing, Applicant stated that he had saved \$3,000 for payment of his old debts.¹²

The SOR identified 12 purportedly continuing delinquencies as reflected by credit reports from 2009 and 2010, totaling approximately \$37,700. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

Applicant challenged a number of his debts with the credit reporting companies. As a result of his challenges, the debt in SOR ¶ 1.a for \$98 has been removed. The credit reports of record reflect that he disputed the debts in SOR ¶¶ 1.d, 1.h, 1.i and 1.l. These debts total \$7,930. The results of the disputes are unknown.¹³

Relying on the advice of the bankruptcy attorney, Applicant wrote to the creditors in SOR ¶¶ 1.b through 1.j and 1.l on March 23, 2010.¹⁴ In his letter, he offered a specific amount of money to pay or settle his debt. At the hearing, he indicated that he had not received a response to his letters. After the hearing, Applicant received settlement

⁹AE D; AE H; Tr. 18-19, 45.

¹⁰AE H.

¹¹GE 2; AE K; Tr. 49-53.

¹²AE A; AE H; Tr. 27-29, 39, 45.

¹³GE 3; GE 4; AE M.

¹⁴AE L; Applicant sent letters to the four creditors whose debts he disputed.

offers from three creditors. He then paid the debts in SOR ¶¶ 1.b, 1.c, and 1.e, which total approximately \$14,000.¹⁵ The remaining debts in the SOR are unpaid.

After reviewing the credit reports in the record, I find the debts in SOR paragraphs 1.g and 1.k are the same debt. The debt in SOR ¶ 1.k is listed on the October 7, 2009 credit report as in collection, past due, and charged off. The February 25, 2010 credit report shows this account as transferred or sold. Applicant provided documented information indicating these are the same account.¹⁶

Applicant pays his current living expenses. He drives a 2001 car on which he does not owe any money. His current landlord and his most recent landlord verify that he paid his rent in a timely manner. He plans to continue saving his money and paying one debt at a time until his debts are paid in full. Although he received financial advice from an attorney, he has not received formal financial counseling. He expected a 2% to 3% merit pay increase in July 2010 and some extra work time beginning in June 2010. He planned to apply these additional funds to his outstanding debts.¹⁷

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.

¹⁵AE C; AE E; AE F; AE G.

¹⁶GE 3; G3 4; AE M; Tr. 70.

¹⁷AE I; AE J; Tr. 22, 24, 27-28, 47-48.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

19(a) inability or unwillingness to satisfy debts; and

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

Applicant accumulated delinquent debt from his business and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these two disqualifying conditions.

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(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,¹⁸

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, and

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 operated his own business for 10 years. He incorporated his business in early 2006. However, the creditors would not lend money to his new corporation without his personal guarantee to pay the debts, which he gave. His business prospered until the economy changed for the worse in 2008. After months of trying to continue his business, he decided to close it in 2009, a reasonable decision. His other choice was to continue to accumulate debt while operating a declining business. He sold the business assets and paid some of his bills from this money. The income from the asset sale did not provide sufficient money to pay all his business debts. He acted reasonably when he sold the assets and applied most of the income to business debt.

After several months of unemployment, Applicant began working at his present job one year ago. Once he re-established his finances with a steady paycheck, he paid his parents the money he had borrowed from them. He used his tax refund to pay his active credit card in full, based on the advice of the bankruptcy attorney. Again, relying on the advice of this attorney, he wrote letters to his creditors, offering to settle his debts. These letters reflect some good faith on his part to resolve his old debts. At the same time, he moved closer to his job, which reduced his monthly gasoline costs, and began saving money to pay his debts.

¹⁸Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

After the hearing, three creditors replied to his letters and offered settlements, which he paid.¹⁹ He disputed five debts listed on his credit reports because he did not believe the debts were his. One debt has been removed as a result. The credit reports note his disputes, but the results of the disputes are unknown. He has not heard from other creditors about resolving his debts. Mitigating condition 20(b) is applicable and mitigating conditions 20(c), 20(d), and 20(e) are partially applicable.

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

¹⁹He paid more than \$3,000 in settlements. He did not explain the source of all this money, but given his parents have lent him money in the past and his mother's name is on at least one check, I find that his parents may have provided him some financial assistance in paying these debts.

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. Applicant’s financial problems began with the economic downturn in 2008. He tried to keep his business operating, but could not. He decided to close the business in 2009 before his level of debt increased. After selling the business assets, he spoke with a bankruptcy attorney about his debt problems. He decided against bankruptcy and to pay his debts.

Once he obtained full-time employment, he developed a plan to pay his past-due debts. He began a slow and steady accumulation of funds to repay his debts. He paid his parents first, then his current credit card because it accumulated interest monthly. Following the instructions of the bankruptcy attorney, he wrote his creditors in March 2010 offering to settle his debts. Three creditors eventually responded and he resolved these debts. Over the last year, he has resolved over \$17,000 in debt, including the money he owed his parents and his active credit card balance. He does not live excessively. He drives a 9-year-old car and lives in an affordable house. He took little money from his business. His debts accumulated simply because his business declined in the realities of an economic downturn - people were not spending money in the same way as they had done when the economy was good. 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 been able to pay all his debts in the last year, because his monthly income, without the inclusion of any expenses, is insufficient. Even though he has not resolved all of his debts, he has paid several debts and made offers to resolve the remaining debts, including those he disputes. He plans to continue saving his money

and paying one debt at a time. His plan is reasonable and credible as shown by his past efforts to resolve his debts. Applicant is a financially responsible individual who acquired debts during the operation of his business which failed due to the decline in the economy. He has acted responsibly to pay his creditors, and established a track record of debt payment. The circumstances surrounding his inability to pay his debts do not raise concerns about his fitness to hold a security clearance. (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

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