



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



In the matter of:)	
)	
)	ISCR Case No. 09-08341
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: George Weaver, Esquire

February 28, 2011

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information.

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on July 15, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on March 19, 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 March 26, 2010. He answered the SOR in writing on April 13, 2010. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on June 30, 2010. DOHA assigned this case to another administrative judge, who scheduled a hearing for July 26, 2010. Applicant, thereafter, retained counsel, who requested a continuance. For good cause shown, the continuance was granted in an order dated July 12, 2010. I received the case assignment on August 11, 2010. Applicant's counsel submitted a letter on August 16, 2010, requesting that the hearing in this case not be scheduled until after November 1, 2010 for medical reasons. Counsel's request was granted in an order dated August 19, 2010. DOHA issued a notice of hearing on November 12, 2010, and I convened the hearing as scheduled on December 15, 2010. The Government offered five exhibits (GE) 1 through 5, which were received and admitted into evidence without objection. Applicant testified. He submitted 11 exhibits (AE) A through J, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on December 28, 2010. I held the record open until January 15, 2011, for Applicant to submit additional matters. Applicant timely submitted AE K, without objection. The record closed on January 15, 2011.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in the SOR.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 64 years old, works as a flight simulator instructor for a Department of Defense contractor. He returned to work for his current employer in March 2009 after three years of full retirement. Applicant is a pilot and worked for a major airline for three years in the late 1980s.²

Applicant graduated from college with a bachelor's degree in business administration in 1968. He enlisted in the United States Air Force in 1968. During his four years of active duty, Applicant served in Vietnam twice. During these years, he flew B-52 combat missions, where his plane came under enemy fire. Because of this

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. 28-30.

experience, “he would never put another service member or civilian in harm’s way.” He received an honorable discharge from active duty in 1972. He enlisted in the United States Air Force Reserve in 1974 and retired in 2006 at the rank of Lt. Colonel. During his years in the Reserve, he served as a pilot doing airlift missions in combat areas in Bosnia and Desert Storm. As a civilian, Applicant worked as a flight instructor for the United States government. He retired from his civilian government position in 2006.³

Applicant married in 1980 and divorced in 1998. He has one daughter, who is 25 years old. She lives independently. He is active in his church and travels abroad on church missions.⁴

Applicant became involved in real estate investments through church friends, who were a couple. His friends worked in real estate investments and asked him to become an equity partner with them. He agreed. Later, the husband became seriously ill. Applicant helped his friends by paying their monthly mortgage payment. When the real estate market started to decline, he purchased their house in July 2007, which allowed them to use the equity in the house to pay medical bills and attempt to salvage their failing real estate business. He paid approximately \$510,000 for this property. He financed the property with a first and a second mortgage. Applicant currently rents this property. His friends signed a promissory note for \$120,000, which represents the money they owe to him. They have not made any payments on this note.⁵

Applicant agreed to help his brother-in-law and sister-in-law with purchasing a house in 2006. Applicant purchased a house for them costing \$665,000. He financed the house with a first and second mortgage. Applicant understood that his brother-in-law and sister-in-law would eventually purchase the house from him. For a period of time, Applicant paid the monthly mortgage payments of \$5,000, and his brother-in-law paid him rent after moving into the house. In 2007, his brother-in-law fell behind in the rent, leaving Applicant to pay the full mortgage payment. When he could not continue making the monthly mortgage payments, he defaulted on the loan after trying to unsuccessfully sell the property. (SOR ¶ 1.b and 1.c) The mortgagor foreclosed on the house, which was eventually sold for \$346,000. The mortgagor issued Applicant a form 1099-A for the \$214,000 difference in sale price and mortgage balance on the first mortgage in 2009. (SOR ¶ 1.c) This resulted in a tax liability with the Internal Revenue Service (IRS). Applicant paid a portion of his tax liability with a credit card and pays the remaining tax debt through a monthly payment to the IRS. Applicant negotiated a settlement of the second mortgage loan on this property in January 2011, which he directed to be paid by automatic withdrawal from his checking account. (SOR ¶ 1.b)⁶

³GE 1; Tr. 25-27.

⁴GE 1; GE 2; Tr. 24.

⁵Response to SOR; GE 3; AE J; Tr. 40-43, 53-54.

⁶GE 2; GE 3; AE I; AE J, p. 17; AE K; Tr. 38-40, 44-45, 54-55, 59.

Applicant's brother-in-law signed two promissory notes totaling \$500,000. His brother-in-law has not paid Applicant the money due and owing.⁷

In 2007, Applicant obtained a construction loan from the bank to build a house. The builder did not complete the construction of the house as required. The county did not issue an occupancy permit, and Applicant did not accept the house. The bank foreclosed on this property in November 2008. The bank sold the property for less than the debt owed, leaving Applicant with a debt of approximately \$150,000. (SOR ¶ 1.a) Applicant negotiated a settlement of his debt with the mortgage company. The mortgage company prepared an Agreement for Release and Accord and Satisfaction, which both parties signed on November 29, 2010. Applicant has resolved this debt, which is shown on his latest credit report with a zero balance.⁸

Applicant currently earns \$3,693 in net monthly pay from his employment. He also receives additional monthly income totaling \$7,866 from his civil service retirement, military retirement, Veteran's disability, and natural gas royalties. In addition, his tenant pays \$1,850 a month in rent. Applicant's total net monthly income is \$13,409. His monthly expenses total \$11,371, including a mortgage of \$652 on his residence, the mortgage on the rental property of \$3,871, the IRS installment payment of \$355, credit card payments of \$1,273, a line of credit payment of \$60, and regular living expenses of \$5,160. Applicant is slowly reducing his credit card debt. After payment of his monthly expenses, he has a remainder of \$2,170. He used this money to resolve two of his SOR debts. Applicant describes his lifestyle as "stoic", as he lives in a two-bedroom condominium and drives a Ford Fusion. The credit reports of record reflect that Applicant routinely paid his bills and still does. The credit reports show financial problems related only to the real estate mortgages, which are the subject of this case.⁹

At the hearing, Applicant acknowledged that he did not exercise due diligence when deciding to invest in the real estate market. He did not check the financial background of his friends. He no longer rents to family or involves himself in family financial matters.¹⁰

Applicant submitted seven letters of recommendation from co-workers, friends, and colleagues. They describe Applicant as honest, ethical, and hardworking. He is committed to the United State and is trustworthy. They consider him a man of integrity and principle. In 2001, the Air Force Reserve command selected Applicant and a few other pilots to develop and implement simulator training for new C-130 H2 pilots. His

⁷Response to SOR; Tr. 57, 59.

⁸GE 2; AE H; AE J, p. 12-14; Tr. 36-38, 44-45.

⁹GE 4, GE 5; AE H; AE I; AE J; AE K; Tr. 38-40.

¹⁰Tr. 41, 54-55.

neighbor trusts him to care for their young son. Applicant is one of only a few people they would trust to care for their son. All authors speak very highly of Applicant.¹¹

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.

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.

¹¹AE A- AE G.

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.

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

Appellant developed significant financial problems when he invested in real estate in 2006 and 2007. He incurred significant debt as a result of his investments, which he could not pay. These two disqualifying conditions apply.

The Financial Considerations guideline also includes 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 decided to invest in the real estate market for the first time in 2006 to help family members and a year later to help friends. Shortly after his decision, the economy began to decline, and his family and friends could not pay the agreed-upon rent or contribute to his mortgage payments on their residences. At the same time, the resale of real estate properties slowed down significantly, making it impossible for him to sell his properties and forcing him to allow the bank or mortgage company to foreclose on several of his properties. After the properties foreclosed, he reached agreements to resolve two of his outstanding second mortgages and a third debt created when the bank sold his property for less than his loan debt. He also resolved his primary mortgages, which resulted in a tax liability to the IRS. He immediately developed a payment plan with the IRS to resolve this additional debt. He is paying his credit card debts created during this time. He manages his monthly income and pays his bills each month. His finances are under control. He has learned from this experience and has no future intent to invest in the real estate market. He has mitigated the Government's security concerns through the mitigating factors (a) - (d).

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. In reviewing the evidence of record, it is clear that he took affirmative action to pay or resolve his delinquent debts arising from his investments and raising security concerns. (See AG ¶ 2(a)(6).)

Applicant accepts responsibility for his debts and his past financial decisions. When he realized the extent of his financial problems, Applicant decided to return to work after three years of retirement. His income from his current job pays the additional debts he incurred as a result of his failed investments. He lives modestly and within his income. He pays his monthly bills, and he performs volunteer work for his church and community. He served in Vietnam twice, flying missions in combat zones. He also served in Bosnia and Iraq. He is loyal to the United States and would not harm his

fellow countrymen. He demonstrated that he is a financially responsible person and that he is an honorable man. 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. Through his candor at the hearing and his evidence, Applicant has established that he is fit to hold a security clearance.

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

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