



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-08497
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

November 15, 2010

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information because he has taken control of his past due debts. He hired a debt consolidation company and developed a payment plan including all the debts listed in the Statement of Reasons (SOR). This company paid the debts in SOR ¶¶ 1.c and 1.d, plus another account not listed in the SOR. In summary, SOR ¶¶ 1.a, 1.b, and 1.e are in the payment plan, and ¶¶ 1.c and 1.d are paid.

Applicant signed his Electronic Questionnaire for Investigations Processing (e-QIP) on September 15, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on April 13, 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 April 21, 2010. He answered the SOR in writing on May 6, 2010, and requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on June 24, 2010, and 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 3, 2010. The Government offered five exhibits (GE) 1 through 5, which were received and admitted into evidence without objection. Applicant testified. He submitted five exhibits (AE) A through E, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on August 18, 2010. I held the record open until September 2, 2010, for Applicant to submit additional documents. Applicant timely submitted 10 additional exhibits, AE F through AE O, without objection. The record closed on September 2, 2010.

### **Procedural Ruling**

#### **Notice**

Applicant received the hearing notice on July 22, 2010, less than 15 days before the hearing. (Tr. 8.) 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 all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 42 years old, works as an information specialist for a Department of Defense contractor. He began his employment with his current company in March 2007. He enlisted in the United States Air Force in January 1987, shortly after graduating from high school in 1986. He served on active duty for 20 years and retired in February 2007.<sup>1</sup>

Applicant married in 1990. He has two sons, ages 20 and 15. Both sons live with him. His oldest son attends college on a scholarship and with help from his grandparents.<sup>2</sup>

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<sup>1</sup>GE 1; Tr. 20.

<sup>2</sup>GE 1; Tr. 20, 26.

Applicant's wife is self-employed. She sells retail goods through home shows for a major company. Her company changed its method of commission payment in 2009, which resulted in reduced income from her commissions. In addition, she conducted fewer home shows. She earned \$31,500 in gross income from her business in 2007 and \$27,500 in gross income from her business in 2008. In 2009, she earned \$19,000 in gross income from her business. Applicant's wife received commission income of \$1,496 in April 2010, of \$1,296 in May 2010, and of \$859 in June 2010. Her income continues to be less than in past years.<sup>3</sup>

Applicant earns \$49,000 a year. His net monthly income from his job totals \$3,440. He also receives approximately \$1,262 a month in military retirement and \$123 a month from the Veterans Administration. His net monthly income totals \$4,825. Applicant's father won the Lotto, which provided him an annual income. His father died in 2004. Applicant and his brothers, as heirs, receive an annual payment of \$6,000 after taxes in March of each year. This payment will continue for eight more years.<sup>4</sup>

Applicant's monthly expenses average \$5,900, based on the spread sheet prepared by his wife. His expenses included \$1,212 for his first and second mortgage, \$300 for his motorcycle, \$165 for cell phones, \$400 for utilities, \$280 for car insurance, \$48.50 for life insurance, \$350 for groceries, \$145 for internet and cable, \$277 for gasoline, \$57 for a loan payment (to end in September 2010), and \$978 for debt repayment. His miscellaneous expenses, such as eating out, credit card payments, and lunches, average \$1,700. With his wife's income, there is sufficient income each month to pay their expenses. In July 2010, their expenses exceeded their income, resulting in the non-payment of one mortgage payment and their cable bill. These bills were to be repaid in August and September, according to the budget. His wife prepare a second document, which shows other miscellaneous expenses, including a vacation in June 2010. Applicant's wife won this vacation through her job. Their actual out-of-pocket cost for this trip for four people was approximately \$500.<sup>5</sup>

Until 2009, Applicant paid his bills regularly. When his wife's income declined, they experienced problems paying their credit cards. They paid two credit cards one-week late in late 2008 or early 2009. The creditors increased their interest rate on these cards from 14% to 33%, causing them to default on the debt. He contacted these creditors on several occasions to work out a solution, but the creditors would not cooperate.<sup>6</sup>

When they realized they had problems with paying their debts, Applicant and his wife contacted a debt consolidation company in January 2009. They retained its

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<sup>3</sup>AE F; AE K; AE N; AE O; Tr. 21, 36-37.

<sup>4</sup>GE 2; AE L ; AE M; Tr. 28, 37-38, 45.

<sup>5</sup>AE G; AE I.

<sup>6</sup>GE 2 - February 19, 2010 credit report; Tr. 21.

services on February 23, 2009, and paid an initial payment of \$3,659 on April 27, 2009.<sup>7</sup> Each month since April 2009, they have paid this company \$978. Their payments have been applied to the company's service fee and used to develop a reserve account for payment of the eight debts listed with the company. This company has paid three debts for Applicant. He anticipates completing his program and paying his remaining debts in a year.<sup>8</sup>

Applicant listed eight debts totaling \$67,000 with the debt consolidation company. He included the five debts listed in the SOR and three credit cards not in default. The debt in ¶ 1.e is listed in the SOR under the creditor's name and in his payment plan under the type of credit card (i.e. VISA, MasterCard, American Express, Discover, etc.). The debt consolidation company paid the debts in SOR ¶¶ 1.c and 1.d, plus another account listed in the payment plan. In summary, SOR ¶¶ 1.a, 1.b, and 1.e are in the payment plan, and ¶¶ 1.c and 1.d are paid.<sup>9</sup>

Applicant and his wife made the final payments on her 2002 car and his 2004 truck by February 2010, giving them an additional \$960 a month. They file their income taxes each year. In 2007, they received a tax refund of \$4,238. In 2008, they received a tax refund of \$2,780. In 2009, they received a tax refund of \$445. Applicant purchased the motorcycle in 2008 when gasoline cost \$4 a gallon and he drove 60 miles a day to work. The monthly cost of insurance, loan, and gasoline for the motorcycle was less than the monthly cost of gasoline in his truck.<sup>10</sup>

Applicant has not participated in credit counseling. He and his wife have discussed doing so. They are working on changing their spending habits, especially how they spend their extra money. His wife manages the family finances and keeps a spread sheet of their expenses. Their two credit cards are paid in full each month.<sup>11</sup>

The credit reports of record reflect that Applicant paid his bills each month until 2009. The credit reports also indicate that the majority of Applicant's bills are still paid in a timely manner.<sup>12</sup>

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<sup>7</sup>This payment was made after they received the Lotto payment. Applicant did not know if the Lotto money in 2009 was used for this payment. Tr. 29-30.

<sup>8</sup>AE A; AE C; AE J; Tr. 21-23, 25, 30.

<sup>9</sup>GE 3, p. 2, 4, 5, 9; AE B; AE C; AE D; AE E; AE H; AE J, p. 3, 5; Tr. 30-32. The debt in SOR ¶ 1.d was recently sold to a new creditor.

<sup>10</sup>AE K; AE N; AE O; Tr. 26-27, 41-42.

<sup>11</sup>Tr. 48-53.

<sup>12</sup>GE 2; GE 4; GE 5.

## 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.

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:

- (a) inability or unwillingness to satisfy debts, and
- (c) a history of not meeting financial obligations.

Appellant developed significant financial problems when his wife's income declined and he paid two credit cards late, which resulted in a significant increase in his interest rate and high monthly payments. He fell behind in his payments and has not resolved all the debts. 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:

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

Applicant's debt problems began about two years ago, which is recent. The circumstances under which his debts arose, his wife's lost income, may occur again. However, his debt problems do not cast doubt on his current reliability, trustworthiness, or good judgment because he and his wife acted reasonably and exercised good judgment when they decided to hire a debt consolidation company to help them resolve their debt problems. Thus, AG ¶ 20(a) applies partially.<sup>13</sup>

Applicant's wife's loss of income created by the economic downturn and changes in her employer's commission payments impacted their ability to meet all their financial obligations. The change in her income was not a factor within their control. Likewise, the more than 100% increase in the interest rate on two credit cards created a monthly payment they could not meet. They immediately recognized that they had a financial problem and retained the services of a debt consolidation company. They acted reasonably under the circumstances. AG ¶ 20(b) applies.

They have not obtained financial counseling. However, their unpaid debts are part of a payment plan they developed with the debt consolidation company. Through this company, they have paid two SOR debts, plus another debt not listed in the SOR, but which was a part of their debt payment plan. They have also paid the fee required by this company. The remaining debts will be paid as their funds increase through their monthly payments. They pay their monthly expenses regularly, although the spread sheet shows that they did not pay one of their mortgage payments and their cable bill in July 2010. Their budget does provide for immediate catch up of these bills. They paid off the debts on both cars this year. Their debts are being resolved and they are learning to manage their finances. With the spread sheet, they have a better idea on how they are spending their money. AG ¶ 20(c) applies.

Through the credit consolidation company, two of the creditors have been contacted, and the debts paid after a good faith offer was made. AG ¶ 20(d) is 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

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<sup>13</sup>ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010, AJ Moody dissenting).

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. Applicant and his wife had high expenses, which they paid regularly until her income declined and two credit card companies more than doubled the interest rate on their credit cards



when their payment was a week late. Their monthly budget reflects some expenses, such as eating out and lunches, which could be further reduced as these expenses may not be necessary. Recently they missed two monthly bills, but have provisions in their budget to catch up these bills immediately. While they are working on reducing their monthly expenses, a credit counselor may help them with their goals should they decide to obtain such counseling.

When Applicant and his wife developed financial problems, they contacted and hired a debt consolidation company. Through this company, they have resolved two of the five debts listed in the SOR, paid a third debt in the payment plan, and paid the service fee requested by the company. They have consistently paid the \$978 monthly payment to this company since April 2009, showing a payment track record. Through negotiation, the company will pay the remaining SOR debts one at a time, as sufficient funds accumulate. Applicant and his wife also resolved their car debts. They are fully aware of their unpaid debts and working to resolve these debts in a prudent and realistic manner. Applicant's 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. While some debts remain unpaid, they are insufficient to raise security concerns because until recently, Applicant timely paid his bills and when his financial problems started, he immediately sought help with resolving his debts. He is a responsible individual. Through his actions, he has demonstrated that he is trustworthy and honest in regards to his finances. (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

## **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.

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MARY E. HENRY  
Administrative Judge