



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



In the matter of:)
)
) ISCR Case No. 09-08592
SSN:)
)
Applicant for Security Clearance)

Appearances

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

December 2, 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 an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on August 27, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on May 5, 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 10, 2010. He answered the SOR in writing on May 22, 2010 and requested a hearing before an administrative judge. DOHA received the request on May 24, 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 exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified. He submitted six exhibits (AE) A through F, which were 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 matters. Applicant timely submitted, AE G through AE R, which were admitted into evidence without objection. The record closed on September 3, 2010.

Procedural Ruling

Motion to Amend

Department Counsel moved to amend the SOR at the hearing. Specifically, Department Counsel requested to amend allegation 1.i of the SOR to correct the amount of the debt alleged from \$1,563 to \$1,258. Applicant did not object to the motion. I granted the motion and amended SOR allegation 1.i to reflect the correct amount of the debt as \$1,258. (Tr. 7-8)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.d, 1.f, 1.g, and 1.i of the SOR. His admissions are incorporated as findings of fact. He denied the factual allegations in ¶¶ 1.e, 1.h, 1.j, and the security concern identified 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 32 years old, works in software engineering for a Department of Defense contractor. He began this job in August 2009. His supervisor praises his work ethic and skills. His supervisor considers him hard working, trustworthy, and reliable. He is considered an asset to his company and its military customers. His supervisor was aware of his financial problems before he hired Applicant, but decided to hire him as he

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).

was the most qualified candidate for the position. Three friends wrote letters of recommendation. They describe him in different terms, but each expresses a confidence in him and considers him honest and a person of high moral character.²

Applicant graduated from college in December 2000 with a bachelor's degree in psychology. After college, he worked as an operations team leader from November 2001 until April 2005, when he was laid off from his job. He obtained a second job in operations in October 2005 and enrolled in an information technology (IT) training program. He completed his IT training in July 2006 and received a certificate of completion. He continued to work in operations for several more months.³

Applicant started an IT job in March 2007. This employer laid him off as a result of a reduction-in-force in January 2009. Except for a few weeks work in March 2009, he did not work until he started his current position in August 2009.⁴

Applicant married in September 2008. He and his wife do not have any children. His father became ill and died in January 2010.⁵

Applicant currently earns \$3,340 a month in gross income and \$2,636 a month in net income. His wife earns \$16.31 an hour. Her gross income varies each paycheck because of shift differential pay, standby pay, and overtime pay. She is not paid every payday for each of these pay items. Based on her earnings statement in the record and an 80-hour work period each payday, her monthly gross income for July 2010 and August 2010 averaged \$2,610. Her net pay for July 2010 totaled \$2,250 and her net pay for August 2010 totaled \$2,253 because of the other pay variables. Their average monthly household net income totals \$4,887, which is higher than their estimate of \$4,722.⁶ Their monthly expenses total \$4,030, including student loan repayments. Applicant did not include estimates in his budget for miscellaneous items such as hair cuts, dry cleaning, and birthday gifts. I estimate his monthly miscellaneous expenses at \$50. He and his wife have approximately \$800 a month for debt resolution.⁷

Applicant and his wife began sharing expenses in 2006, two years before they married. In December 2007, He and his wife purchased a condominium. Their settlement papers provided the name of a management company for payment of their

²GE 1; AE C - AE F.

³GE 1.

⁴*Id.*

⁵*Id.*; Tr. 16-17, 22-23.

⁶After the hearing, Applicant and his wife prepared a budget which reflected higher monthly expenses than he provided at the hearing. He and his wife do not pay all household costs from a joint account. AE H; Tr.41, 65-66.

⁷AE J; AE M; AE N.

monthly condominium fee, but the papers did not list a mailing address for this company. Applicant encountered difficulty with finding a mailing address for the condominium fee. Eventually, he received a bill from his condominium association for \$5,000, which included a special assessment charge and late fees. He made his first payment on this debt in August 2007. Over the next two years, he made sporadic payments. In August 2009, he made a \$3,800 payment.⁸ Applicant paid this debt in full in April 2010 and the condominium association released its lien in May 2010.⁹

Applicant also stopped making his student loan payments, in part because he believed his father had paid his loans. He later learned that his father paid the loan for his IT training only. In February 2010, he contacted the creditor managing this debt and developed a repayment plan. He paid \$85 in February 2010 and \$250 a month from March 2010 through June 2010 to rehabilitate this debt. The federal government applied his 2009 tax refund of \$1,707 to this debt in February 2010. He began his new monthly payment of \$85 in July 2010. He has reduced this debt by \$2,011.¹⁰

Applicant acquired a cell phone in 2002. He currently has four separate cell phone numbers on his account. He includes a cell phone number for his wife, mother, and brother on his account. His monthly bill totals \$216 a month. He has fallen behind in his monthly payments, but his cell phone company has not closed his account at any time in the last eight years. He does not know the reason for the unpaid debt listed in SOR allegation 1.h, which is listed under the name of a collection company representing his cell phone company as listed in the credit reports dated September 5, 2009 and March 2, 2010. He contacted his cell phone company about this alleged debt, which the credit report indicated was sent to collection in 2004. The cell phone company could not provide him any information about the debt or an explanation for the debt. After the hearing, he again contacted the cell phone company and the creditor. The cell phone company and the creditor would not provide him with a letter indicating the charge was invalid. At the recommendation of his cell phone company, Applicant contacted one of the credit reporting companies to challenge the validity of the debt. This credit reporting company did not list this debt under the name of the collection company or as an overdue debt with his cell phone company, thus, he could not file a challenge. Applicant provided a copy of his August 2010 cell phone bill, which showed a beginning balance of \$988 and a payment of \$750, with a new balance of \$454, which included Applicant's current charges.¹¹

⁸Applicant received a tax refund of \$2,703 for the 2008 tax year. See AE K. Applicant did not provide information on the source of the \$3,800 payment, but it appears his tax refund may have provided a substantial portion of this payment.

⁹AE B; AE I; Tr. 19-20, 62-65.

¹⁰AE R; Tr. 22-23, 50-53.

¹¹GE 4; GE 5; AE H; AE P; Tr. 25, 45-48.

Applicant has not paid the two small medical bills (\$113, \$57), one \$920 medical bill, and the \$30 internet bill. Concerning the internet bill, he signed a one-year contract when he opened this account, but did not renew the account when it expired. His yearly cost for this account contract was \$10. He does not know why he has a bill, but he has not challenged the validity of this debt. He believes the two credit card accounts in the amounts of \$3,250 and \$4,701, are from his college days (SOR allegations 1.f and 1.g). He has not paid these debts or contacted the creditors to arrange a payment plan. He recognized the debt in SOR allegation 1. i, which he acknowledged is not paid.¹²

The debt in SOR allegation 1.e is for his wife's wedding ring and a necklace and earring gift set. These items cost \$800 and \$300 respectively. He paid about \$400 on this debt before his payments stopped after he lost his job in 2009. He contacted this creditor in early 2010 and made arrangements to pay the creditor \$86 a month on the debt. He believed that two payments were withdrawn from his checking account, then stopped. He did not provide proof of these payments. He again contacted the creditor after the hearing and arranged to pay \$50 a month on this debt, but has not provided any documentation of this agreement.¹³

Applicant decided to focus on paying his two large debts, the condominium and school loan debts, first. He has not paid any of the remaining debts listed in the SOR. He also indicated that he fell behind in his payments on a loan for a refrigerator, which is not listed on the SOR. He incurred an unexpected repair bill for his air conditioner in the summer of 2010, which he charged. His budget reflects that he pays \$185 on a loan for his wedding and \$50 on a debt his wife owes. He did not provide evidence that he received financial counseling.¹⁴

Applicant provided his tax returns for 2008 and 2009. The tax returns reflect a loss of income in the amount of \$18,000 between 2008 and 2009. The tax returns support his statement that he lost his job and show he received unemployment benefits in the amount of \$5,300 in 2009.¹⁵

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.

¹²Response to SOR; GE 2; GE 3; Tr. 43-45, 48.

¹³AE H; Tr. 36-41.

¹⁴AE Q; Tr. 24-26, 34-36, 49, 53-54.

¹⁵GE 1; AE K; AE L; Tr. 20.

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.

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's financial problems began several years ago and increased when he lost his job in early 2009. He continues to have financial problems. Most of the debts have not been resolved. 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's financial problems occurred under circumstances which can occur in the future and because of poor financial management. He has not provided evidence that he has received financial counseling and his financial problems are not under control. AG ¶¶ 20(a) and 20(c) are not applicable in this case.

Applicant lost his job in January 2009 and did not return to full-time work for seven months. The loss of his job impacted his ability to pay all his bills. When he returned to work, he prioritized his debt repayment, making his condominium debt his first priority. When he was close to resolving this debt, he began working to resolve his

student loan debt. Mitigating condition AG ¶ 20(b) is partially applicable because Applicant has acted reasonably on two debts, but he has not made any efforts to resolve his remaining debts.

Applicant contacted the creditor for his student loans and developed a repayment plan. He has complied with his repayment agreement. Applicant contacted his cell phone company for information on the debt in SOR allegation 1.h, which was held by a collection company. His cell phone company could not provide him with any information on this debt. His later efforts to verify that he did not owe this debt with his cell phone company and the creditor failed. He has a current account with this creditor, which he pays, although not every month. The account is not in collection and continues to be an active account. Applicant made a good-faith effort to determine the legitimacy of this debt. AG ¶ 20(d) applies to the debts in SOR allegations 1.h and 1.j.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 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):

¹⁶AG ¶¶ 20(e) and 20(f) are not applicable in this case.

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.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. When these problems first began, Applicant was a young man, still in college. He completed college and later obtained IT training. He married two years ago. His employer respects his work ethic and his work skills. He is highly valued by his employer for his work. The friends who know him well consider him a great individual and respect him.

Applicant incurred credit card debt as a college student that he later stopped paying. He fell behind in his student loan payments. Twice in the last 10 years he has been unemployed, which impacted his ability to pay all his bills. He pays his mortgage and car payments, but has trouble paying his remaining bills. To his credit, he resolved his condominium debt and rehabilitated his student loan debt. He has sufficient residual household income each month to resolve the debts listed in the SOR, especially the small debts, but he has not done so. He missed payments on the loan for his refrigerator and does not always pay his cell phone bill each month. After the hearing, he and his wife developed a budget, an indication they do not have a full understanding of how they spend money each month. Applicant is making progress on his debts, but he has not shown that he has complete control over his finances. He is moving in the right direction as shown by his resolution of two large debts, but he needs more time to develop a meaningful track record on his debts and to demonstrate that he has control over his income, debts, and monthly expenses. He has not presented sufficient evidence to mitigate the Government’s security concerns about his finances.

Overall, the record evidence leaves me with questions and 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	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