



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



In the matter of:)	
)	
)	ISCR Case No. 10-09690
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

November 21, 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.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on August 20, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on June 17, 2011, detailing security concerns under Guideline F, financial considerations, that provided the basis for its preliminary decision to deny her 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on June 27, 2011. She answered the SOR on July 12, 2011, and a hearing before an administrative judge was requested. Department Counsel was prepared to proceed on August 1, 2011, and I received the case assignment on August 3, 2011. DOHA issued a Notice of Hearing on October 4, 2011, and I convened the hearing as scheduled on October 26, 2011. The Government offered exhibits marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. She submitted exhibits marked as AE A through AE H, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 2, 2011. I held the record open until November 9, 2011, for Applicant to submit additional matters. Applicant timely submitted AE I through AE O, which were admitted without objection. The record closed on November 9, 2011.

Procedural Ruling

Notice

Applicant received the hearing notice on October 12, 2011, less than 15 days before the hearing. (Tr. 7.) I advised Applicant of her right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived her right to the 15-day notice. (*Id.*)

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1, 1.a, and 1.b of the SOR.¹ She also provided additional information to support her 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 31 years old, works as a database analyst for a Department of Defense contractor. She began her current employment in August 2010. Her project manager describes her as a top performer, who can be trusted. He is aware of her financial issues and still recommends her for a clearance.²

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; AE E; Tr. 8.

Applicant married in 2002 and divorced in January 2006. She is currently single and has no children. Applicant graduated from college with a Bachelor of Science degree in business finance in July 2010.³

In 2003, during her marriage, Applicant moved from State A to State B. While in State B, she and her husband purchased a house. Applicant moved back to State A in 2004. She still owns the house in State B, which she rents. In October 2005, Applicant purchased a house in State A.⁴

Applicant began working in the mortgage and banking industry as a loan processor in August 2004. She worked in loan processing and loan coordination until January 2007, when her employer laid her off because its business had declined. In May 2007, she started another job in the mortgage industry as a loan specialist. With the downturn in the mortgage industry, her company terminated her employment in December 2007. In April 2008, she began working for a major university as a finance counselor. She left this job in 2010 to accept her current employment.⁵

When she lost her job in January 2007, Applicant was receiving a salary of nearly \$50,000 a year. Her next job paid \$40,000 a year. Her job with the university paid \$33,000 a year. Within 15 months, her income had declined by \$17,000 a year. Applicant's income tax return for 2006 reflects wages of \$49,145. Her tax return for 2007 shows an income of \$31,234 and for 2008 an income of \$21,863. Her 2009 tax return shows an income of \$31,958 and for 2010, shows an income of \$39,572. Applicant's tax returns generally reflect a negative income from her rental property.⁶

After she lost her job in January 2007, Applicant cashed out her 401k account to pay bills. She also used her small savings and credit cards for bill payments, as she did not receive unemployment benefits. Her father provided her with some money. When she returned to work, she started catching up her bill payments.⁷

When she became unemployed in December 2007, she did not receive unemployment benefits. She had already exhausted her savings and 401k. Without financial resources, she stopped paying her mortgage on the house in State A and her credit card bills. She also fell behind in payments on the rental house in State B.⁸

³GE 1; Tr. 25-26.

⁴GE 1; Tr. 26-27.

⁵GE 1; GE 2; Tr. 22, 24, 33-34.

⁶AE N; Tr. 23-24.

⁷Tr. 25, 34.

⁸*Id.* 25, 31-33.

After she returned to work in 2008, Applicant enrolled in college to complete her education. She attended school almost full time, while working full time. She was 90 days behind in the mortgage payment on the house in State B. After reviewing her debts and income, she decided to catch up the mortgage payment on the house in State B. She and the mortgage company agreed to a repayment plan, which she has completed. This mortgage is in good standing. She also slowly paid her past-due balance on her one active credit card. This account is now in good standing. The credit reports of record support her statements.⁹

After she began her current employment, Applicant started efforts to resolve her unpaid debts. She contacted her former homeowners association in September 2010 to resolve the judgment in SOR allegation 1.a (\$1,755). After months of effort, she located the owner of the debt. She negotiated a settlement of the judgment and paid it in July 2011 with money from her tax refund and savings. The creditor filed a satisfaction line for the debt with the court in August 2011.¹⁰

The \$63,000 debt in SOR allegation 1.b arose from a home equity line on her house in State A. She purchased this house in 2005 with an 80% primary mortgage loan and a 20% second mortgage. Two months after closing on her house, she refinanced the second mortgage because its interest rate was 12%. Her refinanced loan had a lower interest rate, but it was a home equity loan. After she defaulted on her mortgage loan payments, the mortgage lender foreclosed on this house. The foreclosure paid the primary mortgage. Any deficiency on this loan is barred from collection under the State's anti-deficiency statute. The home equity is not barred from collection, and Applicant agrees that it is a valid debt. She has contacted the creditor and attempted to settle this debt. The creditor will not agree to a payment plan for a settlement amount. Instead, the creditor advised that if she had 10% of the debt, it would entertain a settlement offer. As of the hearing, she has saved \$1,000 of the \$6,300 she needed to resolve this debt.¹¹

In August 2011, Applicant obtained a part-time job teaching college testing preparation. The job would begin after she completed a five-week training program. Her employer paid her \$7.35 an hour during training and will pay her \$18 an hour for teaching. She received income of \$85 in September 2011 and \$238 in October 2011 for this job. She directed that these checks be deposited in her savings account. Applicant also consolidated her student loans into one payment, which reduced her monthly payment from \$170 to \$100. This \$70 savings is being placed in her savings account. She is saving these funds towards her settlement money to resolve the home equity line of credit. She anticipates a good tax refund which she will use towards this debt.¹²

⁹GE 2; GE 4; GE 5; AE H; Tr. 27-28, 37-39.

¹⁰Response to SOR; GE 2; AE D; Tr. 39-40.

¹¹GE 2; GE 4; GE 5; AE H; Tr. 27-28, 30, 43.

¹²AE B; AE C; AE L; AE M; Tr. 29-31, 42.

Applicant contacted the creditor in SOR allegation 1.c (\$3,460) in January 2011. After several telephone conversations, she and the creditor agreed to a settlement, which she paid in June 2011 upon receiving her tax refund. She resolved the \$33 debt in SOR allegation 1.d.¹³

Applicant earns \$3,565 in gross monthly income from her full-time job, and she receives \$2,609 in net monthly income. She also receives \$850 a month in rent for her house in State B for a total net income of \$3,459. Her monthly expenses include \$770 on her mortgage for the house in State B, \$85 for the house property manager, \$500 for rent, \$105 for utilities, \$250 for food, \$100 for student loans, \$100 for gasoline, \$30 for medical, \$45 for auto insurance, \$60 for phone, \$60 for clothing, \$50 on her credit card, \$50 on club memberships, \$15 to charity, \$200 towards her equity loan settlement, and \$200 for miscellaneous items. Her monthly expenses total \$2,620, leaving \$839 in disposable monthly income. She does not have a car payment. Applicant has sufficient income to pay her living expenses and her debts.¹⁴

Applicant submitted two additional letters of recommendation on her behalf. They describe her as highly competent, a person of good judgment, and willing to follow rules.¹⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

¹³GE 3; AE H; Tr. 41.

¹⁴AE K; AE O; Tr. 45.

¹⁵AE F; AE G.

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 the following are potentially applicable:

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

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

Appellant developed significant financial problems when she lost two jobs in 2007. Her debts are not completely 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 the following are potentially applicable:

- (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 financial problems began in 2007 and continue until the present, thus her debts are recent. She fell behind in payments on all her debts for a period of time. Her debts were not infrequent. AG ¶ 20(a) is not applicable.

Applicant lost her mortgage industry job twice in 2007, when the economy started to decline. She exhausted her 401k and personal savings accounts trying to pay her bills when she lost her job in January 2007. She attempted to bring her debts current when she returned to work in May 2007, but a second job loss caused her to fall further behind in her debt payments. When she returned to work in April 2008, she worked out a payment plan on one of her past-due mortgages and later brought one credit card current. Because her income had declined by more than 30%, she could not pay all her debts. She continued to pay her current living expenses. She acted responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant resolved the debts in SOR allegations 1.a, 1.c, and 1.d. Her finances are under control, and she lives within her monthly income. She does not live beyond her financial means. AG ¶ 20(c) applies partially because the debt in SOR allegation 1.b is not resolved.

Applicant also initiated contact with many of her creditors in an effort to resolve her debts and reached agreements which resulted in the payment of most of her debts.

She is currently working with creditor for the one remaining debt and has a plan to resolve this debt within the year. AG ¶ 20(d) applies.

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.

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 two job losses in 2007 created significant financial problems. She missed mortgage payments and credit cards payments after she had exhausted her savings and depleted her 401k account. When she returned to work in April 2008, she developed a payment plan to resolve her past-due payments on one mortgage, which she completed. She could not financially manage the rehabilitation of her other mortgage because her income had declined more than 30% in just over a year.

Applicant has a track record for payment of her current and past-due debts. She has a plan to resolve the one remaining debt, which is significant. She reduced her monthly student loan payment and obtained a part-time job to create additional funds for payment of this debt. She also is saving \$200 a month towards this debt and plans to use her 2011 tax refund towards this debt. She is financially stable and has

demonstrated good fiscal management now that she is steadily employed. Most significantly, she has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) She has not yet been able to pay the \$63,000 equity loan. She has developed a plan to resolve this debt. Thus, this debt cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. While one debt remains unpaid, it is insufficient to raise security concerns.¹⁶ (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 her 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
Subparagraphs 1.a-1.d:	For Applicant

¹⁶In 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.

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