



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-09703
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn E. Hoffman, Esquire, Department Counsel  
For Applicant: *Pro se*

September 21, 2011

**Decision**

HENRY, Mary E., Administrative Judge:

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

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on February 2, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on March 4, 2011, 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on March 17, 2011. He answered the SOR on March 31, 2011. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on April 28, 2011. I received the case assignment on May 5, 2011. DOHA issued a Notice of Hearing on May 20, 2011, and I convened the hearing as scheduled on June 14, 2011. The Government offered exhibits marked as GE 1 through GE 7, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits marked as AE A through AE D, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 21, 2011. I held the record open until July 25, 2011, for Applicant to submit more documents. Applicant requested an additional 14 days to submit his documents. I granted his request by order dated June 30, 2011. He timely submitted AE E through AE R, without objection. The record closed on July 19, 2011.

### **Procedural Rulings**

#### **Notice**

Applicant received the hearing notice on June 10, 2011, less than 15 days before the hearing. (Tr. 11) I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived his right to the 15-day notice. (*Id.*)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.d of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.b, 1.c, and 1.f-1.j of the SOR<sup>1</sup> 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 51 years old, works as a help desk technician for a Department of Defense contractor. He began his current employment in October 2009. Applicant received an associate of arts degree in electronics and worked in the computer field for many years. He later received an associates of arts degree in film and worked as a

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<sup>1</sup>When 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).

cameraman for several years. The United States Marine Corps honorably discharged him in April 1981 after two-and-one-half years of service.<sup>2</sup>

Applicant married his first wife in 1980. They separated two years later, but did not divorce until November 1999. He married his second wife in July 2000. They separated in 2006 and finalized their divorce in July 2007. He has a 31-year-old daughter and grandchildren.<sup>3</sup>

Applicant's second wife worked as an anesthesiologist, earning in excess of \$150,000 a year. During this marriage, Applicant returned to school to train as a cameraman. He worked as a cameraman for several years, earning around \$75,000 a year. He and his second wife lived in several states in the mid-west and west. At one time, they decided to buy investment property in the east. In 2006, Applicant moved east without a job and with the hopes his wife would join him. Instead, she proceeded with the divorce action.<sup>4</sup>

Applicant's financial problems began during his separation and continued after his divorce. When he arrived in the east, he purchased a house for \$300,000, which he financed with a \$250,000 first mortgage and a \$50,000 second mortgage. His wife gave him \$5,000 needed for the down payment, and the owners paid the closing costs. He initially paid \$1,800 a month on the primary mortgage and \$600 a month on his second mortgage. His monthly payment increased to \$3,000 a month very quickly. Two or three months after his arrival in the east, he found work.<sup>5</sup>

During his second marriage, he and his wife co-mingled their income to pay their bills. He relinquished any claim to their property and cars in the divorce. When the court finalized their divorce, the court ordered his wife to pay him \$3,000 a month in alimony for two-and-one-half years and to pay \$25,000 of the attorney fees he incurred for the divorce. He owes an additional \$10,000 on the attorney fees and pays his attorney \$100 a month.<sup>6</sup>

Applicant worked in computer technical support for a year in the east before the company outsourced his job. Six to eight weeks later, he obtained a position with a Department of Defense contractor. He left his job after one-and-one-half years,

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<sup>2</sup>GE 1; Tr. 22-23, 25, 48.

<sup>3</sup>GE 1; Tr. 21, 24.

<sup>4</sup>Tr. 25, 27-29, 59.

<sup>5</sup>*Id.* 30-31, 81.

<sup>6</sup>AE E; Tr. 25-27, 50, 62, 102-103.

returning to the west in June 2009. He remained unemployed for four months until he obtained his current job.<sup>7</sup>

Applicant paid his mortgage for eight months. For the next four months, he paid the payments late with the required fees. A year after he purchased his house, he stopped his mortgage payments because he did not have enough money for the monthly payment. When he received notice that the house was being foreclosed, he filed for bankruptcy to stop the foreclosure. He worked with the bank and modified his loan, but again fell behind in his mortgage payments. The bank eventually foreclosed on his house and sold it. The sale of his house resolved the primary mortgage on the house, but it did not resolve the second mortgage. The holder of the second mortgage offered to settle its \$59,000 loan deficiency for \$5,900 by letter dated May 29, 2009. On December 20, 2010, Applicant wrote to the creditor, asking if the offer was still open and expressing a willingness to resolve his debt for this amount. He did not receive a response to his letter. He wrote two additional letters on February 10, 2011 and May 17, 2011, but has not received a response to these letters. Thus, he has not resolved the debt in SOR allegation 1.d.<sup>8</sup>

In November 2007, Applicant traveled to Europe for 15 days with his stepson, grandson, and another child. He paid \$10,000 for this trip. His daughter, stepson, and the parent of the other child also provided funds for this trip. Applicant paid for the trip with funds he had saved towards refinancing his house. He has also taken two trips to Brazil. His brother financed one, and the other cost him less than \$1,000.<sup>9</sup>

Applicant currently earns \$25 an hour and generally works 40 hours a week. His gross monthly income is \$4,000, and his net monthly income is \$2,292. He also receives \$376 a month in veterans disability benefits for a total net monthly income of \$2,668. His monthly living expenses total \$1,707. He also pays \$100 a month to his attorney and \$148 for his school loans. His budget includes a proposed \$200 monthly payment to one SOR creditor to resolve three SOR debts. He has approximately \$500 each month for miscellaneous expenses.<sup>10</sup>

Applicant verified that he paid the debts in SOR allegations 1.c (\$204) and 1.f (\$105). Applicant paid more than \$960 to the creditor in SOR allegation 1.e (\$842 past due on an \$11,679 debt). He called and wrote this creditor after the hearing for verification of his payments on this account as well as his account status. At this time, the status of his account and application of his payments to the account is unknown.<sup>11</sup>

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<sup>7</sup>GE 1; GE 2; Tr. 33-36.

<sup>8</sup>Response to SOR; GE 5; AE G; Tr. 31-32.

<sup>9</sup>GE 1; Tr. 85-89.

<sup>10</sup>AE E; AE F; Tr. 100-103.

<sup>11</sup>Attachments to response to SOR; GE 5; GE 6; AE H; Tr. 40.

Applicant provided documentation that he reached a settlement of the \$1,002 debt in allegation 1.b and that a payment would be deducted from his account. The evidence of record does not reflect that the payments were made, although Applicant wrote for verification of his settlement and payment of this debt after the hearing. He also provided documentation showing a \$503 settlement payment on the \$691 debt in SOR allegation 1.j. and has written for verification of the resolution of this debt.<sup>12</sup>

The three remaining SOR debts (1.g - \$13,854; 1.h - \$2,870; 1.i - \$14,919) are owed to one credit union. Applicant made payments of approximately \$500 on these debts prior to the hearing and has budgeted \$200 towards resolving these debts. However, he does not have an arrangement with the creditor and has not verified the amount of his current debt and all his payments. After the hearing, he wrote to the creditor for further information on his debts, but had not received a response by the time the record closed.<sup>13</sup>

Applicant's supervisor described him as dependable and resourceful in learning the processes of his job and responsive to their customers. He volunteers in his community and supports his church.<sup>14</sup>

## **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

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<sup>12</sup>Attachments to response to SOR; GE 5; GE 6; AE J; AE K; Tr. 38, 45-46.

<sup>13</sup>Attachments to response to SOR; GE 5; GE 6; AE I; Tr. 43-44.

<sup>14</sup>AE A - AE D.

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 after he and his second wife separated and divorced. He lacked sufficient income to pay his bills. 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 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 has paid several small debts and made efforts to pay other debts listed in the SOR. He has contacted a number of his creditors, asking either for the status of his accounts or a settlement offer to resolve his debts. He has not received financial counseling; however, he has a budget which indicates that he has sufficient income each month to pay his living expenses and pay some of his debts. His debts are older, not recent. His financial problems began with his divorce and were aggravated by periods of unemployment, some of which were voluntary. His mortgage problems resulted from his poor-decision making. Within the last year, he has made some efforts to resolve his old debts. AG ¶¶ 20(c) and 20(d) are partially applicable in this case.

### **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 reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.<sup>15</sup> While married to his second wife, Applicant had sufficient income to pay all his living expenses. When he and his wife separated, his financial problems began. He decided to move east without a job because he and his second wife had discussed living and investing in property in the east. With some help from his wife, he purchased a property that he could not afford without her income. He found work, but he did not earn sufficient income to pay his monthly mortgage payment. Eventually, the lender foreclosed on his house. Since his divorce, he experienced some periods of unemployment; however, his 2009 unemployment was voluntary, because he decided to move west when he did not have a job.

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<sup>15</sup> 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.



Applicant pays his current expenses and has sufficient income to do so. He now lives modestly. However, he has not provided sufficient evidence to show that he resolved or is resolving his past due debts. He does not have a meaningful track record of debt resolution nor does he have an established plan to resolve his largest debts. Although he has taken some initial steps to resolve his large debts, the creditors have not provided information that reflects their agreement with his proposals or provided information indicating his debts are resolved. Since he has only begun the process of resolving his unpaid debts, his old, unpaid debts continue to present a security concern.

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

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MARY E. HENRY  
Administrative Judge