



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



In the matter of: )  
)  
) ISCR Case No. 10-02443  
)  
Applicant for Security Clearance )

**Appearances**

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

10/18/2012

**Decision**

HENRY, Mary E., Administrative Judge:

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

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on November 9, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on August 23, 2011, detailing security concerns under Guideline F, Financial Considerations. 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 and submitted his answer dated October 4, 2011. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on February 24, 2012. DOHA assigned this case to another administrative judge, who scheduled the case for hearing on May 2, 2012. All parties appeared for the hearing as scheduled. During the submission of the Government's evidence, the administrative judge decided to continue the hearing and directed Department Counsel to resend the discovery documents to the Applicant. The administrative Judge rescheduled the hearing for July 20, 2012 for a video-teleconference hearing. The hearing did not proceed after the administrative judge received notice that the video-teleconference facilities would be unavailable for this date. DOHA reassigned the case to me on July 20, 2012. DOHA issued a third Notice of Hearing on August 8, 2012, and I convened the hearing as scheduled on August 28, 2012. The Government offered exhibits (GE) marked as GE 1 through GE 8, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE J, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 7, 2012. I held the record open until September 21, 2012, for Applicant to submit additional matters. Applicant timely submitted AE K - AE P, which are admitted without objection. The record closed on September 21, 2012.

## **Procedural Ruling**

### **Notice**

Applicant received the hearing notice on August 14, 2012, less than 15 days before the hearing. (Tr. 15) 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, 1.a.i, 1.d, 1.f - 1.j, 1.l, and 1.o - 1.s of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a.ii, 1.b, 1.e, 1.k, 1.m, 1.n, and 1.t 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.

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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).

Applicant, who is 41 years old, works as a security officer for a Department of Defense contractor. He began his employment with his current employer in March 2002 as an account manager. His work site closed in August 2007. His employer offered him his current position, which he has held for the last five years. Applicant also worked as an account manager for another security service from 1999 until 2002.<sup>2</sup>

Applicant graduated from high school in 1990. He served in the United States Army from 1990 until 1993, when he was honorably discharged. He attended college for two years from 1994 until 1996, but he did not receive a degree. Applicant and his wife married in 2002. They have a three-year-old daughter and a new son. Applicant also has a 14-year-old son from another relationship.<sup>3</sup>

In 2007, Applicant's employer closed his work site, where Applicant worked as an account manager earning \$23.86 an hour plus overtime. He earned \$954 a week and \$3,817 a month for a 40-hour work week. His employer offered him a security officer position at another work site, which he accepted. His hourly wage decreased to \$20.48 an hour in August 2007 and remained the same in August 2012. For a 40-hour work week, he earns \$819. His monthly gross income is \$3,276 plus overtime. His recent earnings statement reflects that he generally works between one and eight hours a week in overtime at an hourly rate of \$30.72. His overtime hours are being reduced. His monthly net income averages approximately \$2,889.<sup>4</sup>

Applicant's wife operates a home business and contributes approximately \$3,000 a month in gross income to the household. In August 2012, Applicant obtained a part-time position earning \$16 an hour. He worked 60 hours during his first two weeks on the job. His gross income was \$1,164 and his net income was \$907. His pay statement does not reflect that federal and state taxes have yet been deducted from his pay, which will reduce his bi-weekly net income. This job should increase his net monthly income by at least \$1,500 a month.<sup>5</sup>

The SOR identified 19 purportedly continuing delinquencies as reflected by credit reports from 2011 and 2009, totaling approximately \$167,548. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

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<sup>2</sup>GE 2; Tr. 71-72.

<sup>3</sup>GE 2; Tr. 45-47, 72.

<sup>4</sup>AE F; AE N; Tr. 30-31, 50-53.

<sup>5</sup>AE J; AE K; AE L; AE O; Tr. 50-51, 109.

Applicant and his wife purchased a home in 2005 for \$450,000. They financed the house with a first and second mortgage. His monthly payment was \$2,700 plus \$500 in taxes. When his income decreased, Applicant encountered problems paying his bills. He decided that he wanted to continue paying for his house. He stopped his credit card payments, but not his car payment. In 2008, his mortgage company notified him that it intended to increase his monthly payment to \$5,000. He applied for a modification of his mortgage loan in 2008, which resulted in no increase in his monthly payment of approximately \$3,500. In 2009, he applied for a second home mortgage modification, and his mortgage was reduced to \$2,800 a month for ten months. He and his wife applied for a third home mortgage modification in 2011, which was approved. As of October 1, 2011, he began making monthly payments of \$2,515, including taxes. He will pay this amount for five years, when his monthly payment will increase yearly for three years to a final monthly mortgage payment of \$2,580 plus taxes. Applicant missed his November mortgage payment because he needed money to travel across the country for his brother's funeral. He and the mortgage company worked out an agreement, which allows him to repay this payment in small increments until fully paid. He verified that he is making his mortgage payments.<sup>6</sup>

The SOR debts related primarily to credit card accounts and one mortgage account. The \$115,000 mortgage debt (SOR 1.e) relates to the second mortgage on Applicant's house. The mortgage lender released this lien in October 2011 and advised Applicant that he was not required to send payments on this loan. After a careful review of the credit reports and a consideration of Applicant's testimony, I find that the debts in SOR ¶¶ 1.b (\$9,286) and 1.o (\$9,285) are the same debt. For the same reasons, I also find that the debts in SOR ¶¶ 1.j (\$744) and 1.m (\$596) are the same. The debts in SOR ¶¶ 1.k (\$975) and 1.t (\$924) may be the same debt, but evidence of record is insufficient to reach that conclusion.<sup>7</sup>

Applicant has not resolved any of the remaining debts listed in the SOR. With his second job, he plans to consolidate his debts and pay them. He does not want to file for bankruptcy because he owes this money. At this time, his unpaid debts total \$42,667, which Applicant stated would be insufficient for him to betray his country or compromise his family.

Applicant submitted his federal and state tax returns for the tax years 2009 and 2010. Both returns reflect that he and his wife owed additional federal and state taxes for both years. The tax returns also reflect that between 2008 and 2010 Applicant's gross income has declined \$13,000, with the majority of the lost income related to his wife's business. His 2011 tax returns have not been filed, as he received an extension of time to file. He did not provide a budget. However, the credit reports do not show unpaid utility or telephone bills. I find that these bills are paid. The credit reports reveal that most of his current unpaid debts arose in 2007 and 2008 and that he does not have

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<sup>6</sup>AE H; AE I; Tr. 47-49, 78-79, 83-88.

<sup>7</sup>GE 5- GE 7; AE G; Tr. 48-49, 58-60.

unpaid medical bills, even though he does not have medical insurance. Applicant testified that he could not afford the \$1,000 a month premium for medical insurance and his earnings statement shows that he does not pay for medical insurance although he has dental and vision insurance. The tax returns do reflect that his wife may have had health insurance in the past as a self-employed person. He has not participated in financial counseling and no longer uses credit cards.<sup>8</sup>

Applicant submitted three letters of recommendation from friends, two of whom are or have been co-workers. All consider him dependable, responsible, honest, and trustworthy. The Government submitted a previous decision by a DOHA Administrative Judge Kathryn Moen Braeman. The issues before Administrative Judge Braeman concerned unpaid debts and personal conduct. Administrative Judge Braeman rendered a decision in favor of Applicant.<sup>9</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 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

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<sup>8</sup>GE 5 - GE 7; AE K - AE M; Tr. 50, 78-79, 89-91.

<sup>9</sup>GE 1; AE C - AE D.

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;
  
- (c) a history of not meeting financial obligations; and
  
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant developed significant financial problems when his employer reassigned him to another position which decreased his income and when his wife’s business income declined. His credit card debt reflects excessive spending, which he could not

pay when his household income declined. Most of the debts have not been resolved. These three 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:<sup>10</sup>

(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; and

(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.

Applicant's employer closed his work site and transferred him to another job at a lower wage, causing a decline in his monthly income. At the same time, his wife's business lost income when the economy declined. Applicant has not received a salary increase in five years, even though his expenses continue to increase. These events are beyond his control. When his finances became unmanageable, he made a choice to keep his home and not pay the credit cards. He then renegotiated his mortgage payments several times and has successfully reduced his monthly mortgage payments for the next five years. He pays his current expenses, but he has not made any payments on his credit card debts. He just recently started a second job. He plans to

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<sup>10</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, 2007). 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.

use this money to pay his past-due debts, but he does not have a payment plan nor has he contacted any of the creditors. He is entitled to partial mitigation under AG ¶¶ 20(b) and 20(c). In addition, based on the evidence of record, SOR allegations 1.e (\$115,000), 1.m (\$596) and 1.o (\$9,285) are resolved in favor of Applicant. SOR allegation 1.a is a factual statement found in favor of Applicant.

### **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. Applicant's current financial problems arose between 2007 and 2008 and are connected to his loss of income and his wife's loss of income. He stabilized his spending, by eliminating credit card usage and renegotiating his mortgage debt. His recent decision to accept a part-time job is a step in the right direction as his income from his full-time job is insufficient to allow him to pay his debts. He has resolved his largest SOR debt. However, he needs time to negotiate debt reduction and develop payment plans for his remaining debts. In developing his payment plans, Applicant needs to keep in mind that his 2009 and 2010 tax returns revealed that he owed taxes each year and that no taxes are currently being withheld from his part-time job. He is married and has three children. He has focused his attention on providing a stable domestic environment for his family and maintaining a home for his family. Because of this focus, he stopped paying his credit



card bills, which he is just beginning to resolve. He maintains his current living expenses and has not incurred more debts.

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 failed to mitigate 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
Subparagraphs 1.b- 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p-1.t:	Against 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