



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



In the matter of:)	
)	
)	ISCR Case No. 10-02715
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

May 26, 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) version of a security clearance application (SF-86) on November 9, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on October 27, 2010, detailing security concerns under Guideline F, Financial Considerations, and Guideline J, Criminal Conduct, 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 November 4, 2010. He answered the SOR on November 17, 2010 and requested a hearing before an administrative judge. DOHA received the request on November 22, 2010, and Department Counsel was prepared to proceed on December 6, 2010. DOHA assigned the case to another administrative judge on January 10, 2011. For work load reasons, the case was reassigned to me on March 2, 2011. DOHA issued a notice of hearing on March 15, 2011, and I convened the hearing as scheduled on April 6, 2011. The Government offered exhibits marked as GE 1 through GE 6, which were received and admitted into evidence without objection. Applicant testified. He did not submit any exhibits. DOHA received the hearing transcript (Tr.) on April 13, 2011. I held the record open until April 21, 2011, for Applicant to submit additional matters. Applicant did not submit any additional evidence. The record closed on April 21, 2011.

Procedural Ruling

Notice

Applicant received the hearing notice on March 31, 2011, less than 15 days before the hearing. 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. (Tr. 9)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 2.a-2.c of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a-1.h of the SOR.¹ After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 34 years old, works in physical security for a contractor to the National Aeronautics and Space Administration (NASA). He began his employment in late 2009. Prior to this job, Applicant worked in the railroad industry for 13 years.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; Tr. 16-17.

Applicant graduated from high school in 1995, and he attended college for one year. He married in 2000 or 2001 and divorced in 2007. He has a nine-year-old son, who lives with him. When he and his wife divorced, he received full custody of their son. His wife does not pay him child support. He and his wife agreed that she would retain their house and her car and that he would keep his car and his railroad pension.³

Applicant currently earns \$45,000 a year. His monthly expenses total approximately \$2,300, leaving him with approximately \$200 a month for debt payment and unanticipated bills.⁴

Financial

The SOR identified eight purportedly continuing delinquencies, as reflected by credit reports from 2009, 2010, and 2011, totaling approximately \$16,458. 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.

Applicant denied all the debts listed in the SOR. He initially stated that he did not recognize the creditors or the debts. At the hearing, he agreed that the \$10,413 debt in SOR allegation 1.b may be his former wife's car. He admitted that he co-signed her car loan, that she retained the car as part of the divorce, that she agreed to pay the loan, and that she defaulted on the car loan. He does not intend to pay her debt. He further admitted that the \$222 utility bill in SOR allegation 1.h may be from his marriage and that he did not remove his name from household accounts after his divorce. The credit reports indicate that both debts became delinquent before he and his wife divorced, not after their divorce, as he believed happened with the car loan.⁵

Applicant has not paid any of the debts listed in the SOR. He indicated that he disputed the debts with the credit reporting agencies on the computer, but that he did not receive a response to his disputes. He contacted the original creditor and the current creditor identified in SOR allegation 1.d (\$690). He stated that neither creditor showed a debt in his name, but he did not provide information verifying his statement. He has a credit card with the original creditor, but he did not provide information showing his account is current.⁶

³GE 1; Tr. 17, 28-29.

⁴GE 4; Tr. 34-36.

⁵GE 2; Tr 17-24, 28-31.

⁶*Id.* 17-18.

Applicant testified that since 2002, he only has had two credit cards. Thus, the credit cards debts listed in SOR allegations 1.a (\$1,572) and 1.c (\$644) are unknown to him. The original creditor and the current collection company for the \$1,587 debt in SOR allegation 1.e are unknown to him. He may have had insurance with the creditor identified in SOR allegation 1.f (\$242), but he does not know. Likewise, he may have had an account with the telephone company listed in SOR allegation 1.g (\$988) many years ago, but not recently. He has had an account with his current telephone company for four years.⁷

Applicant currently uses his credit union for all his loans or credit needs. He timely pays or paid all his debts with the credit union, as shown on the credit reports. Applicant has not received a demand for payment from the creditors listed in the SOR or any other information regarding the debts. The debts in SOR allegations 1.a through 1.c are six to seven years old and the debts in SOR allegations 1.d through 1.f and 1.h are three to four years old.⁸

Criminal Conduct

In 2002, Applicant wrote a \$20 check to a retail store which the bank returned for insufficient funds. The bank also returned a second check for insufficient funds. The payees on the checks contacted the police, who issued warrants for Applicant on two theft by check charges, but did not serve Applicant with the warrants in 2002. Applicant learned about one warrant when he was arrested in 2007. He paid the check and court costs in 2007, and the court dismissed the warrant.⁹

While he was completing his security application, Applicant learned, through his employer's security clearance process, about two outstanding warrants. One warrant related to the second check discussed above, which he resolved immediately. The second warrant related to his failure to appear in court on a traffic ticket. He acknowledged receiving a traffic ticket for failure to fully stop at a red light and forgetting to appear for his court hearing. After learning about this warrant, he paid the fine, and the court dismissed the warrant.¹⁰

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

⁷*Id.* 17-24.

⁸GE 2; GE 5; GE 6; Tr. 27.

⁹Tr. 25, 32-33.

¹⁰*Id.* 26, 32-33.

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 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.

The credit reports of record show that Applicant owes a number of debts, which he has not paid. 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

After receiving the SOR, Applicant made no effort to pay or otherwise resolve the debts listed in the SOR. There is no evidence that he sought financial counseling. He stated that he disputed the debts because he does not recognize many of the debts

listed in the SOR, but he did not provide any documentation showing that he disputed these debts. He divorced in 2007, but the record does not contain any evidence that the SOR debts are a result of his divorce. Some debts occurred a long time ago, but other debts are more recent. Applicant has not mitigated the security concerns arising from his past debts as he has not presented evidence which shows he took any action to pay, resolve, or challenge the validity of these debts.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes conditions that could raise a security concern. I have considered all the conditions, and the following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Retailers decided to pursue two small-dollar-value worthless checks written by Applicant as crimes. The police charged Applicant with theft by check in 2002 and warrants were issued in 2002. The police arrested him under one warrant in 2007. When Applicant did not appear for a traffic hearing on a traffic citation in 2008, a warrant for failure to appear in court was issued. These disqualifying conditions apply.

AG ¶ 32 provides conditions that could mitigate security concerns. I have considered all the mitigating conditions, and the following are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

In 2002, Applicant wrote two checks which the bank returned for insufficient funds. He was unaware of the problem with his checks or of warrants being issued on charges of theft by check. He was also unaware that a warrant issued for failure to appear on his traffic citation. When he learned about these warrants, he paid the fines and court costs. The bad check incidents occurred nearly nine years ago. He has not

written any other checks which the bank returned. His traffic citation is an isolated incident. Applicant holds a steady job and has worked regularly for the last 14 years. He has not been involved in any serious criminal activity. He is a single parent, who provides all the financial support for his son. Overall, the record supports a finding of rehabilitation and a conclusion that this past conduct is not likely to recur and does not cast doubt on his reliability, trustworthiness, or good judgment. Applicant has mitigated the security concerns about his past criminal conduct.

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):

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. Applicant is a single parent, who works steadily and supports his son. He pays his regular living expenses and his current debts. However, he not shown that he has taken steps to resolve the debts identified in the SOR. He does not recognize many of the debts, but he did not provide documentation showing that he has disputed these debts with the credit reporting agencies. His failure to take responsible action towards these debts raises a security concern about his judgment and responsibility in financial matters.

In 2002, he wrote a \$20 check which the bank returned to the retailer. He also wrote another check with the same result in 2002. Since then, he has not written any bad checks. He does not have a pattern of writing checks with insufficient funds to buy items he cannot afford. The problem with these checks occurred a long time ago and does not raise any security concerns. The traffic violation and subsequent failure to appear warrant is an isolated incident that is not likely to recur in the future. Applicant is not a criminal, but rather a hardworking individual who is raising his son alone.

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 mitigated the security concerns arising from his criminal conduct under Guideline J, but he has not mitigated the security concerns regarding 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:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	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