



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-03147  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Paul M. DeLaney, Esquire, Department Counsel  
For Applicant: *Pro se*

06/25/2012

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied as he did not mitigate the security concerns about his finances.

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on December 14, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on November 2, 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 on November 15, 2011. He submitted a notarized, written response to the SOR allegations with attachments dated December 6, 2011, and requested a decision on the written record in lieu of a hearing.<sup>1</sup>

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on March 15, 2012. Applicant received the FORM on March 26, 2012. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on May 29, 2012. The Government submitted nine exhibits, which have been marked as Items 1-9 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1.

### **Findings of Fact**

In his Answer, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.d-1.f, 1.h-1.p, 1.r-1.t, 1.v-1.y, and 1.aa of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.c, 1.g, 1.q, 1.u, 1.z, and 1.bb of the SOR.<sup>2</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 41 years old, works as a mechanic for a Department of Defense contractor. He began his current position in December 2009. Applicant and his first wife married in 1993 and divorced in 1996. He has a 18-year-old daughter from this marriage. He married his present wife in 1998. They have a 12-year-old daughter, and he has two stepsons, ages 20 and 17. Applicant graduated from high school and has received technical training. He attended a community college for a short time.<sup>3</sup>

Applicant worked for Company A from March 2007 until September 2008, when he was terminated as a result of budget cuts. He collected unemployment until April 2009. He worked for Company B for three months, then Company B laid him off. He was unemployed until December 2009, when he started his current position. As of January 2010, Applicant began working part-time for Company C. The earnings

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<sup>1</sup>Applicant initially requested a hearing, but later withdrew his request, choosing a decision on the record.

<sup>2</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).

<sup>3</sup>Item 5.

statement for this company indicates that his wife, not him, now works part-time for this company.<sup>4</sup>

Applicant provided a copy of one weekly paycheck for May 2011. He earns \$768 in his gross regular pay, plus overtime, double-time pay, and daily per diem. For this pay period, his gross pay totaled \$2,713 and his net pay totaled \$1,865. Applicant's earnings statement indicated that his 2011 year-to-date gross pay was \$51,332.60 for 18 weeks, which calculated to an average gross weekly income of \$3,019. Because his actual earnings are impacted by overtime pay, I find that Applicant's gross monthly income averaged \$12,076 a month and his monthly deductions averaged \$3,034. His net monthly income averaged \$9,042. His wife earned \$1,880 in net monthly income. She also received \$530 a month in child support.<sup>5</sup> Their average monthly net household income is \$11,452. His wife's earnings statement showed a gross monthly bonus of \$5,435 and a net bonus payment of \$4,029 in May 2011. The record does not clearly indicate that she receives this amount as a bonus each and every month or only once a year. Their monthly household expenses total \$5,433 and include his child support payments, her student loan payment, medical bills, and a credit card debt payment, all of which are not listed on the SOR. After payment of all their bills, Applicant and his wife have approximately \$6,000 a month in discretionary income. This does not include her \$4,000 bonus money received in May 2011.<sup>6</sup>

The SOR identified 28 delinquencies as reflected by credit reports from 2009 and 2011, totaling approximately \$51,000. 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's 2011 answers to interrogatories reflect that a number of small debts listed in the interrogatories, but not on the SOR, were paid in 2011. Applicant's wife outlined the remaining debts listed in the interrogatories with a note about proposed or current payment plans on these debts. Proof that the actual payments had been made as outlined in the plan has not been submitted.<sup>7</sup>

The SOR identified four student loans. The student loans in SOR allegation 1.o (\$6,241) and 1.p (\$5,178) were deferred until December 2011. The record does not

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<sup>4</sup>Item 5; Item 6.

<sup>5</sup>His youngest stepson turns 18 in July 2112. In all likelihood the child support payments for him will end. Item 5.

<sup>6</sup>Item 6.

<sup>7</sup>*Id.*

contain information, showing that these loans are being paid or are still deferred.<sup>8</sup> The March 15, 2011 credit report indicated that the creditor for the student loans in SOR allegations 1.r (\$11,747) and 1.s (\$9,243) assigned the loans to the federal government. The record lacks any clear evidence on the present location of these loans. The October 2011 credit report lists the student loans in allegations 1.o and 1.p separately; thus these loans are not the same as the loans in 1.r and 1.s.<sup>9</sup>

The October 2011 credit report indicates that the \$80 medical debt in SOR allegation 1.g is paid. This credit report also reflects that Applicant paid \$260 towards the \$593 medical bill listed in SOR allegation 1.c. Despite a discrepancy in account numbers on the credit reports and the verification of payment letter, Applicant's assertion that this debt is paid in full is accepted as valid. Although Applicant has not provided definitive proof that the \$33 debt in SOR allegation 1.q and the \$563 debt in SOR allegation 1.bb are paid, I find these bills are paid based on Applicant's forthright statements about his debts in this file. SOR allegations 1.j and 1.aa are the same as the accounts numbers and amount owed are identical. Finally, none of the credit reports in the file reflect a debt owed to the creditor identified in SOR allegation 1.k in the amount of \$58.<sup>10</sup>

The credit reports reflect that Applicant's debt problem began in July 2004. Some SOR debts are eight years old and some SOR debts are three years old. The 2011 credit reports do not show any recent past-due debts. Applicant stated that his financial problems arose from low paying jobs and periods of unemployment. He did not provide information, such as tax returns, verifying his income for the years before he accepted his current job.<sup>11</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

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<sup>8</sup>Applicant submitted a document showing deferment of two student loans until June 2012. The account number on this document does match the Sallie Mae student loan listed on the October 13, 2011 credit report. The Sallie Mae loan number is different from the student loans identified in SOR allegations 1.r and 1.s. The student loans in SOR allegations 1.o and 1.p are listed separately on this credit report. Item 7.

<sup>9</sup>SOR; Item 4; Items 6 to 9.

<sup>10</sup>Item 4; Items 7 to 9.

<sup>11</sup>Items 7 to 9.

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.

Applicant developed significant financial problems by 2004. Many of these debts related to medical expenses and have remained unpaid for many years because of inadequate income. 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.

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.

Applicant’s financial problems began many years ago and continue to the present. Low income and 12 months of unemployment between September 2008 and December 2009 contributed to his financial problems. Since many of his unpaid bills concern medical treatment, he clearly did not have adequate medical insurance. These are factors beyond his control. However, with his current level of monthly discretionary income, he has not acted diligently or responsibly to resolve his old debts.

Applicant paid some of his smaller debts in 2011, many of which are not listed in the SOR. He is given credit for paying these debts and four small SOR debts he stated he paid. He indicated that he had payment plans in place for many of the SOR debts, but did not provide any documentation showing a payment plan between him and his creditors. Likewise, he has not shown through documentation that he is making his monthly payments as required by the plans or that he has paid these debts. Many of these SOR debts are for less than \$500. Given that he has approximately \$6,000 in discretionary income each month, he had sufficient income in 2011 to resolve many of the smaller SOR debts by the end of the year. The record evidence does not reflect that he has done so. While Applicant asserts that he is paying his debts, he has not shown a “track record” through documented proof of payment, such as cancelled checks or a letter from the creditor showing his payments, or that he, in fact, has a payment track record with his creditors. The record before me does not contain much information about his actual payments to his creditors. Applicant is given partial credit under AG ¶¶ 20(b) and 20(c). The remaining mitigating factors are not applicable.

### **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 decision, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has a long history of financial problems, stemming, in part, from low wages and unemployment. He has substantial unpaid medical bills, but the reason for these bills is not explained. While he has made some effort to resolve his past-due bills, his efforts are insufficient because his budget shows \$6,000 a month in discretionary income. He has not explained or shown through evidence why he has not paid these bills. Even if he used only one-half of his discretionary income for six months, he could have resolved many of the SOR debts by the end of 2011. Applicant has sufficient monthly income to pay his current living expenses and a large amount of income remaining after the payment of his bills. Yet, he has not paid his old debts. His household income has improved significantly in the last two years, but his debt payment is slow.<sup>12</sup> In light of these facts, questions about his income management remain. The evidence of record fails to show that Applicant has control over his finances, and that he has established a track record for payment of his 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 has not mitigated the security concerns arising from his finances under Guideline F.

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<sup>12</sup>Some of Applicant's old debts may be barred from collection under applicable state statute of limitations. However, many of his past-due debts are not barred from collection and remain unpaid. Applicant has a long history of unpaid bills through 2009, which reflect problems with financial management.



## 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:	For Applicant
Subparagraphs 1.d-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant
Subparagraphs 1.v-1.y:	Against Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	For Applicant
Subparagraph 1.bb:	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