



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



In the matter of:)	
)	
)	ISCR Case No. 10-04664
)	
Applicant for Security Clearance)	

Appearances

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

05/16/2012

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 signed an Electronic Questionnaire for Investigations Processing (e-QIP) on October 13, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on June 22, 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 July 7, 2011. He answered the SOR on July 25, 2011. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on September 20, 2011. DOHA assigned this case to Administrative Judge Loughran, who initially scheduled a hearing for March 27, 2012. At Applicant's request, Judge Loughran continued the hearing until April 17, 2012. Due to a family emergency, Judge Loughran could not conduct the hearing. I received the case assignment on April 9, 2012, and I convened the hearing as scheduled. The Government offered exhibits marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. He did not submit any exhibits at the hearing. DOHA received the hearing transcript (Tr.) on April 24, 2012. I held the record open until May 8, 2012, for Applicant to submit additional matters. Applicant did not submit any further documentation. The record closed on May 8, 2012.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.d and 1.h - 1.j of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.e, 1.f, and 1.g of the SOR.¹ 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 46 years old, works as an aircraft mechanic for a Department of Defense contractor. He began his current employment in September 2009. Applicant retired from the United States Air Force in August 2004 after 21 years of service. He worked as an aircraft mechanic in the military for 17 years.²

Applicant graduated from high school and has approximately two years of college credits. Applicant married in 1986 and in 1992. Both marriages ended in divorce. He and his present wife married in 2006. They have two daughters, ages 4 and 5. His wife has three children, ages 17, 15, and 12, who live with them. Applicant has a 17-year-old daughter, for whom he provides monthly child support, which will continue while she attends college.³

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; GE 2; Tr. 14.

³GE 1; Tr. 22-23, 36.

Applicant began accumulating debts after he retired from the Air Force. He was not prepared for living in the civilian world after retiring and became depressed. Four months after he retired, he found work as an aircraft parts assembler, earning \$10.25 an hour. Over the next five years, he worked two or more jobs at a time to earn sufficient income to support his family. In September 2009, he moved his family 2,000 miles from home to accept his current position, which pays \$31 an hour.⁴

Around the first of January 2011, Applicant and his wife returned home from work to find a default notice,⁵ not an eviction notice, on the front door of the house they rented. He called the owner, who lived in another state, then he started looking for another house to rent. In March 2011, he moved his family to their current address. He needed \$3,900 to move, which included his first month's rent and a security deposit. He never received his security deposit from his first rental home.⁶

Applicant earns \$5,227 in gross monthly income and receives \$4,048 in net monthly income. He also receives \$1,350 a month in military retirement, and his wife's net monthly income approximates \$3,000, for a total net household income of \$8,398. His monthly expenses total approximately \$7,762, not including his \$150 a month payment to the creditor in SOR allegation 1.a. His monthly net remainder is \$486. Since completing his personal financial statement in May 2011, Applicant paid one monthly bill in full, which decreased his monthly expenses by \$90. His child support and child care expenses increased by \$36 a month. He anticipates a reduction in his child care costs starting in the fall when his five-year-old daughter starts school full-time. He anticipates completing payments on two other monthly bills by the end of this year, which should free up another \$315 a month.⁷

After reviewing the credit reports (CR) dated November 3, 2009, May 21, 2010, March 21, 2011, May 9, 2011, and the SOR, I find the evidence establishes the 10 debts listed in the SOR. Applicant's actual debts and the status of any payments are as follows:⁸

SOR ¶	Type of Debt	Amount	Status	Evidence
1.a	Judgment	\$ 7,326.00	Paid \$1,920 by April 2011; paying \$150 a month	GE 2 (payments verified to April 2011 only)

⁴GE 1; Tr. 23-24.

⁵The default notice belonged to his landlord. Tr. 25-27.

⁶Tr. 25-27.

⁷Ge 2; Tr. 34-39.

⁸GE 2 - GE 5; Tr. 28-33.

1.b	Utility bill	\$ 639.00	Unpaid	Tr. 28
1.c	Repossession	\$29,063.00	Offer made, no payments	GE 2; Tr. 29
1.d	Bank account debt	\$ 97.00	Unpaid	Tr. 30
1.e	Credit card	\$ 906.00	Thought paid	Payment not verified, Tr. 30-31
1.f	Credit card	\$ 322.00	Thought paid	Payment not verified, Tr. 31-32
1.g	Cell phone	\$ 302.00	Paid	GE 2; Tr. 32
1.h	Communications	\$ 248.00	Unpaid	Tr. 33
1.i	Public service account	\$ 25.00	Unpaid	Tr. 33
1.j	Cable	\$ 260.00	Unpaid	Tr. 33

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 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 after he retired from the Air Force. His necessary move one year ago impacted his ability to continue paying his debts. All but one of the SOR debts remain unresolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns.⁹ I have considered mitigating factors AG ¶ 20(a) through 20(f), and the following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debt problems developed after he retired from the Air Force. His initial jobs paid low wages, necessitating additional part-time employment to pay living expenses. In 2009, Applicant moved his family many miles to accept a better-paying position. He negotiated a payment plan for the judgment and started paying this debt in 2010. His evidence reflects that he complied with the payment plan until April 2011. He has failed to verify his continued compliance with this plan. He satisfied the wireless

⁹In 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.

phone debt in SOR ¶ 1.g in early 2011. About this same time, he found a default notice on the front door of his rental home. He realized he needed to move, and in March 2011, he moved his family to another house with a lower monthly rent. He needed a new security deposit as well as the first month's rent to move into his new house. The move cost him \$3,900, leaving little money to pay his past-due bills. AG ¶ 20(b) is partially applicable because he could not foresee the sudden need to move, and its associated costs were an unanticipated expense. His past low employment income is also a factor beyond his control as wages are directed by the market place. He resolved this problem by moving for a better-paying job. However, it is difficult to conclude that Applicant has acted responsibly toward his creditors when he has not provided evidence of credible efforts over the past year to address many of his debts, including one as minor as \$25.

Applicant has not received financial counseling nor has he contacted a credit counseling company to help resolve his debts. He is given credit under AG ¶ 20(d) for satisfying the debt in SOR 1.g. However, the majority of his SOR debts remain unpaid. He has not provided evidence of a payment plan to resolve these debts. He has not mitigated the Government's security concerns under Guideline F.

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. After Applicant retired from the Air Force in 2004, he encountered difficulties finding a job which paid sufficient income to cover his family's monthly living expenses. He worked more than one job to pay his customary living expenses, but he could not afford to pay his old debts. He moved his family many miles for a better-paying position with a new employer. He started a payment plan on the judgment, but whether he continues with this payment plan is unknown. He paid one small debt one year ago, but has not made an effort to pay the two smallest debts of \$25 and \$97, even though he has sufficient discretionary income each month to pay these debts. While some circumstances largely beyond his control caused him to fall behind or impacted his inability to resolve his past-due debts for a time, concerns persist about his financial judgment because of his ongoing inattention to most of his delinquent 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.

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
Subparagraphs 1.a - 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h - 1.j:	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.

MARY E. HENRY
Administrative Judge