



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 10-06440 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: Charles D. Radeline, Esquire

07/13/2012

**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 granted.

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on February 5, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on February 14, 2012, 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 February 27, 2012 which he answered on March 1, 2012. Applicant retained counsel and requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on April 12, 2012. I received the case assignment on May 1, 2012. DOHA issued a Notice of Hearing on May 10, 2012, and I convened the hearing as scheduled on May 31, 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 E, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 12, 2012. I held the record open until June 19, 2012, for Applicant to submit additional matters. Applicant timely submitted AE F - AE J, which were received and admitted into evidence without objection. The record closed on June 19, 2012.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.d of the SOR. He also admitted the factual allegation in ¶ 2.a of the SOR with explanation, including a denial of any intentional conduct. His admissions are incorporated herein as findings of fact.<sup>1</sup> He 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 32 years old, works in communications security for a Department of Defense (DOD) contractor. He began his employment with his employer more than 12 years ago. Over the years, he has steadily increased his work responsibilities and duties. Applicant has held a DOD security clearance since 2003 without any violations of security procedures.<sup>2</sup>

Applicant graduated from high school in 1998 and attends college part-time. He recently completed his associate's degree and is continuing work towards his bachelor's degree in criminal justice. Applicant married in February 2006 and divorced in 2011. He has two sons, ages 7 and 6. He has custody of his sons. Applicant and his sons live with his parents. His former wife provides no financial support for his sons nor does he pay her alimony. His former wife has three other children ages, 13, 11, and 9. Although

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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).

<sup>2</sup>GE 1; Tr. 43-44, 57.

he has no required financial responsibility for these children, he has provided some financial support to his former wife, when the children needed food.<sup>3</sup>

In 2000, Applicant purchased a house for \$55,000. His girlfriend, at the time, shared the expenses related to the house. When that relationship ended, his brother moved into the house and shared the expenses. At the time he met his wife, she worked in the cleaning services industry. After they married, he anticipated that she would continue to provide income to the household. During their marriage, she worked full-time for three to six months, then periodically at part-time jobs.<sup>4</sup> With five children and only his income to support the family, he resorted to using credit cards to pay for food, utilities, and other necessities of life. In 2007, he refinanced his house for \$80,000, with a one-year adjustable rate mortgage. He received between \$5,000 and \$10,000 cash from the settlement. He is not sure how he used the money, but he thinks he paid a credit card debt and maybe purchased a car. After the refinance, his mortgage increased from \$450 a month to \$670 a month. By 2009, he could no longer pay the mortgage and his other bills.<sup>5</sup>

Applicant's employer increased his hourly rate from \$16.55 an hour to \$16.96 an hour beginning with the April 28, 2012 pay period. Applicant's current monthly gross income is \$2,713. After deductions for taxes, insurance, retirement, legal services, fitness, health savings account, and two loans, Applicant receives \$1,526 a month in net pay. He received a one-time award of \$500 in May 2012. Applicant pays his parents around \$250 a month towards living expenses. His other monthly expenses include \$300 for car insurance, \$200 for gasoline and car maintenance, \$110 on a credit card,<sup>6</sup> and \$200 for clothes and entertainment for his children. His monthly expenses total \$1,060. He directs an additional \$200 a month to his savings account, which now has an approximate balance of \$800. Out of his monthly remainder of \$266, he usually gives his former wife \$50 to help with food or other living expenses. He sometimes provides some money to his brother and purchases cigarettes for himself.<sup>7</sup>

Applicant pays his taxes. For the tax year 2011, he received a tax refund between \$8,000 and \$9,000. He used this money to pay his SOR debts and to purchase an eight-year-old car. His truck was destroyed in an accident in late 2011. The credit

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<sup>3</sup>GE 1; Tr. 39, 65.

<sup>4</sup>Applicant testified that his wife usually got fired from her jobs, which made him assume she was not a good worker. Tr. 40.

<sup>5</sup>Tr. 54-56.

<sup>6</sup>Applicant closed this account. He no longer charges items to the account, and the creditor no longer charges him interest on the account. He is paying down the principle on this debt. AE A; Tr. 65.

<sup>7</sup>AE H; Tr. 60-71.

reports of record reflect that Applicant paid many bills in a timely fashion and that he fell behind in some bills after his marriage.<sup>8</sup>

The SOR identifies four unpaid debts. Using his tax refund, Applicant resolved the following SOR debts: a charged-off credit card in the amount of \$1,134 (¶ 1.a), a credit card collection account in the amount of \$2,058 (¶ 1.b), and a \$65 parking ticket in collections (¶ 1.d).<sup>9</sup> Applicant verified that these debts are fully paid or resolved.<sup>10</sup>

When his refinanced monthly mortgage payment increased after one year, Applicant encountered difficulties paying his mortgage and his other bills. Applicant submitted loan modification papers to the mortgage company several times in an attempt to work out a new payment structure for his loan. The mortgage company denied receiving his paperwork, and he stopped pursuing the loan modification request. He eventually defaulted on the loan, which has a current unpaid balance of \$80,000. The mortgage company initiated foreclosure proceedings, which are not complete. Claimant is now represented by legal counsel, who is attempting to resolve this debt with the mortgage company. Applicant, through his counsel, has suggested a deed-in-lieu or a short-sale as a way to resolve his outstanding mortgage debt. The mortgage company has not rejected or accepted his suggestion nor has it proceeded with the foreclosure action.<sup>11</sup>

After the hearing, Applicant completed a credit counseling course. Applicant does not intend to open credit card accounts in the future. He plans to pay off his remaining credit card debt as soon as possible.<sup>12</sup>

When he completed his security clearance application (e-QIP), Applicant answered “no” to the following questions in Section 26: Financial Record:

f. Have you defaulted on any type loan?

n. Are you currently over 90 days delinquent on any debt(s)?

Applicant admits his answers, but he denies any intent to hide his financial situation from the Government. He denied being behind in his mortgage when he completed his e-QIP. The February 18, 2010 credit report does not indicate that he had

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<sup>8</sup>GE 2; GE 4; GE 6 - GE 8; Tr. 58.

<sup>9</sup>Applicant had lent his truck to his former wife. While his former wife was in the hospital, her sister drove his truck and received a moving motor vehicle violation ticket. He and his former wife were unaware of the ticket, which he paid. AE A; Tr. 29-31.

<sup>10</sup>AE A - AE C; AE I; Tr. 26-29, 50-53.

<sup>11</sup>GE 4- GE 8; AE A; AE E; AE F; Tr. 32-33; 54-56, 77.

<sup>12</sup>AE G; Tr. 70, 75.

defaulted on his mortgage and that the foreclosure process had started. It did reflect that he was behind in his mortgage payments. He listed other debts, but he did not believe a charged-off debt was a current debt that needed to be listed on his e-QIP. He now knows that he should have answered “yes” to the second question.<sup>13</sup>

When he completed his e-QIP, Applicant answered “yes” to the following questions in Section 26: Financial Record:

g. Have you had bills or debts turned over to a collection agency?

h. Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?

In addition to answering “yes” to these questions, Applicant listed the debts identified in SOR ¶¶ 1.b and 1.d.<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 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,

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<sup>13</sup>Response to SOR; GE 1; GE 2; Tr. 33-35, 47-49.

<sup>14</sup>GE 1; AE D; Tr. 34-35.

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 married and assumed responsibility for five children. He lacked sufficient income to pay all of his living expenses, which resulted in past-due debts and a mortgage loan foreclosure proceeding. 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:

(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 when he married and assumed responsibility for three stepchildren plus his own two children. His wife worked sporadically, which resulted in his income being the primary, and most of the time, the

only household income. His income alone was insufficient to pay the daily living costs for a large family. He refinanced his house in an effort to resolve some of his financial problems, but this decision ultimately created more financial problems for him. He and his wife divorced. Since their divorce, Applicant has reduced his living expenses. By living with his parents, Applicant significantly reduced his monthly housing expenses. His parents help with child care, which saves him a significant amount of money each month and allows him to use his income to pay other bills. He used his tax refund to settle and pay three SOR debts and to buy an eight-year-old car to replace his destroyed truck. He recently took a financial counseling course. He does not live extravagantly and lives within his monthly income. He does not intend to obtain credit cards, as he understands the problems created by uncontrolled use of them. Finally, Applicant retained counsel to help him resolve his mortgage foreclosure problem. Since the bank has not finalized the foreclosure action, Applicant's counsel has requested the bank to accept a deed-in-lieu or to approve a short-sale of the property to settle Applicant's mortgage debt. The bank has not agreed or disagreed with this offer. Thus, the foreclosure proceeding remains an active lawsuit.<sup>15</sup>

Applicant has a track record of paying many of his bills in the past. His marriage and efforts to support five children on a limited income led to unpaid bills. Once his divorce finalized and his personal living situation stabilized, Applicant started working on his debts. By the time the SOR was issued, he had resolved all his SOR debts, but the mortgage debt. Through his counsel, he is working to fully resolve this debt with the mortgage company. He has done all he can do at this time and must now wait for the mortgage company to decide what it will do. He has been paying monthly on one remaining credit card debt. Applicant has mitigated the security concerns under AG ¶¶ 20(b), 20(c), and 20(d).

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<sup>15</sup>In ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an Applicant, who had been sporadically unemployed and lacked the ability to pay his creditors, noting that "it will be a long time at best before he has paid" all of his creditors. The Applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The Applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took "reasonable actions to effectuate that plan." *Id.* The Appeal Board remanded the Administrative Judge's decision because it did not "articulate a satisfactory explanation for his conclusions," emphasizing the Administrative Judge did "not explain[] what he believes that Applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by Applicant was not "responsible" in light of his limited circumstances." *Id.*



## Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from his February 2010 e-QIP, when he failed to acknowledge he had debts more than 90 days delinquent. This information is material to the evaluation of Applicant's trustworthiness and honesty. In his response and at the hearing, he denied that he intentionally falsified his answers on his e-QIP and an intent to hide his debts from the Government. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>16</sup>

Applicant answered "yes" to two financial questions, then listed two SOR debts on his e-QIP. He did not list his mortgage as defaulted because he believed he was current on it when he completed the e-QIP. In fact, his mortgage payments were past-due, but the mortgage company had not proceeded with foreclosure, a process which would indicate the mortgage company had decided that Applicant was in default on his loan. Thus, he did not intentionally falsify his answer to question 26(f). Because Applicant listed two unpaid debts on his e-QIP, he clearly did not intend to hide his financial problems from the Government. I find that Applicant's omissions were not intentional. The Government has not established that the Applicant intentionally omitted material information from his 2010 e-QIP under AG ¶ 16(a).

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<sup>16</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

## 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 financial problems stem from his marriage and efforts to support a family of seven on a limited income. He did not spend his money on luxury items, but on the necessities of life such as food, transportation, and utilities. Since his marriage ended, Applicant has managed his income and provided for his young sons by reducing his monthly expenses. He has acted responsibly about his debts and has taken control of his finances. His parents help with housing and child care, which has enabled him to resolve his financial problems. With the help of his counsel, his mortgage debt will, in all likelihood, be resolved shortly. Applicant is a responsible person, as shown by his taking custody of his sons and still providing some money to his former wife for her children's needs. He continues with college, which reflects his efforts to improve himself and his education. Most significantly, he has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) Of course, the issue is not simply whether all his debts are paid; it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While his mortgage debt is not yet resolved as the process takes time, this debt is insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or 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 finances under Guideline F and his personal conduct under guideline E.

### **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: | FOR APPLICANT |
| Subparagraph 1.a:         | For Applicant |
| Subparagraph 1.b:         | For Applicant |
| Subparagraph 1.c:         | For Applicant |
| Subparagraph 1.d:         | For Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 2.a:         | For Applicant |

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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MARY E. HENRY  
Administrative Judge