



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



In the matter of:)	
)	
)	ISCR Case No. 10-06735
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

November 16, 2011

Decision

HENRY, Mary E., Administrative Judge:

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

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on June 16, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on December 22, 2010, detailing security concerns under Guideline F, financial considerations, 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. He submitted a notarized, written response to the SOR allegations dated February 17, 2011, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on May 4, 2011. Applicant received the FORM on May 12, 2011. 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 November 7, 2011. The Government submitted seven exhibits, which have been marked as Items 1-7 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 2, and the SOR has been marked as Item 1.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. 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 54 years old, works as a supply chain specialist for a Department of Defense contractor. He has been employed by this contractor for 22 years. Applicant attended college, but did not graduate. He is single and has no children.¹

Applicant developed financial problems between 2007 and 2009, which led to many unpaid debts and past-due accounts, including his mortgage. He explained that his financial problems are a result of a decrease in his work hours and his financial overextension.²

The SOR identified nine purportedly continuing delinquencies as reflected by credit reports from 2010, totaling approximately \$25,721. 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 prepared a financial statement in November 2010. He indicated a gross monthly income of \$3,014 and net monthly income of \$2,184. He listed monthly

¹Item 3.

²Items 5 - 7; Response to SOR.

expenses as follows: a mortgage payment of \$789, a rent payment of \$789, utility payments of \$100, car expenses of \$80, food expenses of \$50, and debt repayment of \$362. He did not list his monthly condo fee. Since he verified a mortgage payment, I find that the rent and mortgage payment are the same. His food estimate is too low. Overall, the financial statement is incomplete and does not fully outline his monthly expenses.³

In his November 2010 response to interrogatories, Applicant provided documentation which shows that he retained the services of a debt consolidation company in April 2009.⁴ He listed four debts with this company, including the debts in SOR allegations 1.c (\$3,443), 1.f (\$8,937), and 1.i (\$983). He agreed to a monthly payment of \$362 and authorized automatic withdrawal of this payment on or after the 15th of each month. This payment incorporates the fees charged by the debt consolidation company for its services. The evidence reflects that the initial service fee was approximately \$262 a month for four months. Beginning in month five, the fee reduced to approximately \$140 a month. Applicant's documentation appears to show he made 19 monthly fee payments through October 2010, although his actual payment is not verified. Based on this information, Applicant paid \$3,330 towards his debt resolution by October 2010. The record does not contain any information indicating that he has remained current in these payments or that the company has paid any debts on his behalf. The \$983 debt in SOR allegation 1.i is listed with the debt consolidation company as a \$1,500 debt. This debt is no longer listed on his credit report and may be paid, but payment of the debt is not verified. He has paid one debt listed in the Interrogatories, but it is not listed in the SOR.⁵

In his answer to the Interrogatories, Applicant stated that he would pay the small debts listed in SOR allegations 1.g (\$27) and 1.h (\$62) by December 30, 2010. In his response to the SOR, he indicated he would pay these debts in February 2011. He has not provided documentation which shows that these debts are paid.⁶

Applicant missed several mortgage payments, which created a past due debt of \$3,152 with his mortgage company. In his response to the SOR, he provided a document which indicated that his monthly mortgage payment has been reduced by \$20 a month. This document does not explain if he paid the past-due debt on this account or show that his account is current. The resolution of his past-due mortgage debt is unclear.⁷

³Item 5.

⁴A careful review of this documentation indicates that he electronically signed the contract on April 2, 2009. *Id.*

⁵*Id.*

⁶*Id.*

⁷Item 2.

Applicant indicated that he contacted his condominium association to work out a payment plan on his judgments. He has not provided any information addressing the results of his efforts to work out a payment plan on the two judgments listed in SOR allegations 1.a (\$6,090) and 1.b (\$2,472).⁸

The credit reports of record reflect that Applicant paid many accounts on time. It also shows that he paid three past-due debts.⁹

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

⁸Item 5.

⁹Item 6; Item 7.

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 when his work hours declined, and he over-extended himself. Most of the debts have not been resolved. 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.

Applicant's debts occurred two to four years ago, which is recent, and did not occur under unusual circumstances, as he admitted that he over-extended himself. AG ¶ 20(a) is not applicable in this case. However, Applicant's work hours declined, causing him to lose income, a factor beyond his control. For AG ¶ 20(b) to fully apply, Applicant must establish through competent evidence that he acted responsibly under the circumstances. In his response, Applicant states that he took certain actions to resolve his debts. The evidence he provided shows that his monthly mortgage payment is reduced, but it does not show if or how his past-due payments have been resolved. He paid one debt listed in the interrogatories, but not in the SOR. He also stated that he was attempting to work out a payment plan for the two judgments, but he has not provided any information on the results of his actions. AG ¶ 20(b) is partially applicable.

Applicant signed a contract with a debt consolidation company in April 2009 and for the next 18 months, he made the required \$362 a month payment. He provided no evidence which indicates that he has continued with these payments. Likewise, he provided no evidence that this company has paid any of the four debts identified in the contract. His debts remain unresolved. AG ¶ 20(c) is partially applicable.

Applicant has not provided any evidence that he has negotiated in good faith with his creditors to resolve his debts. Although he indicated that he was working on a payment plan for the two judgments, the results of his negotiations are unknown and the debts remain unresolved based on the evidence in this record. AG ¶ 20(d) is 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 conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.¹⁰ When these problems first began just a few years ago, when Applicant was 50 years old. Loss of income due to reduced work hours created some of his financial problems, but not all. By his own admission, he overextended his finances and could not pay all his bills. Applicant appears to have taken action to resolve his debts, such as retaining the debt consolidation company and working with his mortgage company. He, however, failed to

¹⁰ 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.

provide documentary evidence which clearly outlines all the actions he took and the impact of his actions on his SOR debts.¹¹

Applicant is not required to be debt free to hold a security clearance. However, he must establish by competent evidence the steps he has taken to resolve his past-due debts. In this case, competent evidence is lacking. 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 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.i:	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

¹¹Bank statements or cancelled checks show payments made. Letters or e-mails between Applicant and his creditors reflect the efforts he made and the results. A complete and up to date payment history from the debt consolidation company would show that he is continuing under its payment plan.