



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-07878
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Philip J. Katauskas, Esquire, Department Counsel  
For Applicant: *Pro se*

03/08/2013

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on May 7, 2010. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on June 29, 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 July 5, 2012. He submitted a notarized, written response to the SOR allegations dated July 20, 2012, 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 November 21, 2012. Applicant received the FORM on November 28, 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 February 25, 2013. The Government submitted 12 exhibits, which have been marked as Items 1-12 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 to the SOR, Applicant admitted all the factual allegations in the SOR, most with explanation. 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 findings of fact.

Applicant, who is 44 years old, works as a program manager for a DOD contractor. He began his current employment in November 2009. He worked in a similar position with two other employers beginning in March 2000. In the summer of 2009, his then employer reduced his work hours from 70 hours per week to 40 hours per week, which adversely impacted his monthly income. Later, he was furloughed for three weeks until he found his current employment.<sup>1</sup>

Applicant and his wife married in April 1995. They have two sons, who are 14 and 12 years old. His wife works, but her place of employment is unknown.<sup>2</sup>

Applicant earns \$6,664 a month in gross income and receives \$5,464 a month in net income. His wife's net monthly income totals \$2,300 for a total household net monthly income of \$7,764. His monthly expenses, including mortgage, car payments, car expenses, food, loans, debt repayment, utilities, medical expenses, and miscellaneous items, total \$6,415. His net monthly remainder is \$1,349. The credit reports in the record reflect that Applicant regularly pays his mortgage and car payments and that he paid many other bills in a timely manner.<sup>3</sup>

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<sup>1</sup>Item 5; Item 7, pages 4, 7.

<sup>2</sup>Item 5; Item 6.

<sup>3</sup>Item 6, p. 11; Item 8 - Item 10.

In October 2009, Applicant and his wife enrolled in a financial management program. Under the terms of their contract, they started paying \$654 a month to this program. This money would pay the program fee then be used to resolve their debts. They listed 18 debts with this program for resolution, although the specific debts are not identified. As of July 2012, 11 of the 18 debts had been resolved. Again, the specific debts resolved are not clearly identified. They have timely made their monthly payment to this company. The payment is included in their budget. Between October 2009 and July 2012, Applicant paid this company more than \$20,000 to resolve his debts. The letter varying his plan participation and his plan payments does not list what debts have been resolved.<sup>4</sup>

The SOR identifies nine unpaid medical bills (¶¶ 1.a - 1.i). Although Applicant admitted these debts, the credit reports dated May 15, 2010, November 11, 2011, and October 25, 2012 do not show the medical bills in SOR ¶¶ 1.b (\$221), 1.c (\$290), 1.d (\$231), and 1.e (\$143). In his response, Applicant stated that the medical debts in SOR ¶¶ 1.a, 1.b, 1.d, 1.f, 1.g, and 1.h were pending final payment by his medical insurance carrier. The credit report dated October 25, 2012 reflects that the medical debts in SOR ¶¶ 1.g (\$139) and 1.i (\$24) are paid as well as two other small medical bills sent to collection. The November 2011 and October 2012 credit reports show the actual balance for the medical bill in SOR ¶ 1.a as \$225, not \$295. The record does not contain any evidence showing that all his unpaid medical bills have been paid through insurance or by him.<sup>5</sup>

The SOR identified a variety of unpaid debts in ¶¶ 1.k through 1.r. The November 2011 and October 2012 credit reports indicate that payment of the largest debt, SOR ¶ 1.n for \$13,000, is being managed by a financial counseling program. In his response, Applicant provided documentation which indicates that he paid, through settlement, the debt in SOR ¶ 1.l (\$1,231) and that he made a \$450 payment on the debt in 1.r (\$2,250). It is unclear from the evidence if the one payment resolved the debt in SOR ¶ 1.r. Applicant's documentation also reflects that he resolved other debts, but the documentation does not clearly identify which debts he paid. The November 2011 and October 2012 credit reports show that Applicant paid, through settlement, and fully resolved four other debts, totaling approximately \$9,000, which are not listed in the SOR. Except for the debts in SOR ¶¶ 1.l and 1.n, the status of the debts in SOR ¶¶ 1.k (\$2,549), 1.m (\$4,387), 1.o (\$854), 1.p (\$1,608), 1.q (\$6,139), and 1.r (\$2,250) is not known.<sup>6</sup>

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

<sup>5</sup>Item 1; Item 4; Item 8 - Item 10.

<sup>6</sup>Item 1; Item 8 - Item 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 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.

Appellant developed significant financial problems in 2009 when his employer reduced his weekly work hours by over 40%, which decreased his monthly income by over 40%, and then furloughed him. All 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:

- (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 financial problems started with the reduction in his work hours and subsequent furlough in 2009. This is a factor beyond his control. Because he experienced difficulties paying all his bills as a result, in October 2009, Applicant and his wife contacted, then retained the services of a financial counseling and debt resolution

company, a reasonable action. Through this company, Applicant developed a repayment plan for 18 debts. His credit reports reflect that he resolved four debts totaling about \$9,000 and is paying a \$13,000 debt. He resolved at least four small medical bills (\$210) and requested that most of the remaining medical bills be submitted and paid by his insurance carrier. He has not ignored his debts; instead he had taken responsibility for them. With the help of the financial counseling company, Applicant has taken control of his debts, and made a good-faith effort to pay his past-due debts. These mitigating conditions are 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.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. For a Guideline F case, the Appeal Board provided the following guidance for assessing whether an Applicant has established mitigation 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 debts became unmanageable when his work hours and income declined by more than 40% in 2009, and then his employer furloughed him. He and his wife decided to seek assistance in managing their debt when their income declined. Since October 2009, Applicant has regularly made his monthly payments to the financial counseling company, which is helping to resolve his debts. He has established a meaningful track record of debt reduction. Some of the debts listed in the SOR have been paid, and one is being paid. Applicant resolved several other debts totaling \$9,000. While the status of other debts is unclear, the evidence of record shows that Applicant took responsibility for his debts and began working to resolve his debts more than three years ago. Thus, any unpaid debts cannot be a source of improper pressure or duress. 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 some debts remain unpaid, they are insufficient to raise security concerns because Applicant has sufficient income to pay all his bills and his debts. He lives within his monthly income and is not financially over extended each month. He has been responsible about his mortgage and car loans, as well as some other debts. (See AG ¶ 2(a)(1).) Based on the evidence in this record, Applicant has mitigated the security concerns raised by the SOR.

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.

## **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

Subparagraphs 1.a-1.r: 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