



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-08517
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

December 12, 2011

**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 May 18, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on June 6, 2011, 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 on June 16, 2011. He answered the SOR on June 21, 2011. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on July 27, 2011. I received the case assignment on August 3, 2011. DOHA issued a Notice of Hearing on October 4, 2011, and I convened the hearing as scheduled on October 26, 2011. The Government offered exhibits marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified, but he did not submit any exhibits. DOHA received the hearing transcript (Tr.) on November 2, 2011. I held the record open until November 28, 2011, for Applicant to submit additional matters. Applicant timely submitted AE A through AE E, which have been marked and admitted without objection. The record closed on November 28, 2011. After the close of the record, Applicant's project manager forwarded an e-mail to Department Counsel, addressing Applicant's request for a copy of his performance review. The project manager advised that Applicant's review had been requested, but had not been received. She then provided a brief statement about his performance. The Government did not object to the admission of this document as AE F. This exhibit is admitted into evidence.

## **Procedural Rulings**

### **Notice**

Applicant received the hearing notice less than 15 days before the hearing. (Tr. 8.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived his right to the 15-day notice. (*Id.*)

## **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.c and 1.e of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a, 1.b, and 1.d of the SOR.<sup>1</sup> After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 36 years old, works as a security officer for a Department of Defense contractor. He began his current employment in April 2010. His project

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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).

manager describes him as a dependable employee, who often works overtime. Applicant's employer named him Officer of the Year in 2010. He also worked as a security officer at the same facility for a prior company from 2002 until 2009. From July 2009 until April 2010, Applicant did not work, by his own choice, and did not receive unemployment benefits.<sup>2</sup>

Applicant married in 2004 and he and his wife separated in 2007. They are not divorced. Applicant has two children. His son is 13 and his daughter is 11. His children do not live with him. He pays \$470 a month in child support and is current on his child support payments.<sup>3</sup>

Applicant lives with his mother and younger brother. He pays his mother \$250 a month towards rent and food, plus \$50 a month toward utilities. He does not own a car; instead, he uses public transportation or rides his bicycle. His mother has cable and internet services at home, but he does not have his own cable and internet accounts. He does not have credit cards or a cell phone. His monthly transportation costs average approximately \$20. He recently had surgery and has paid some medical bills related to his treatment. He did not provide copies of any of his payments. While he did not mention monthly miscellaneous expenses, I estimate expenses such as clothing, haircuts, or medical bills, at \$100. His total monthly expenses total approximately \$900.<sup>4</sup>

Applicant provided a copy of his earnings statements from May 6, 2011 through October 20, 2011. He hourly wage is \$10.52 and his monthly gross income is \$1,683. His monthly net pay is \$1,158. He occasionally works overtime and is paid \$15.78 an hour when he does. His net income increases between \$30 and \$60 a month with his overtime work. After he pays his monthly expenses, Applicant has between \$260 and \$320 a month in available funds to pay his debts.<sup>5</sup>

The SOR identified five purportedly continuing delinquencies as reflected by credit reports from 2010 and 2011, totaling approximately \$13,281. 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.

At the hearing, Department Counsel agreed that the debt listed in SOR allegations 1.d and 1.e are the same. The creditor in allegation 1.e is collecting the \$272

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<sup>2</sup>GE 1; Tr. 16, 32.

<sup>3</sup>GE 1; Tr. 15, 22.

<sup>4</sup>Tr. 22-23, 30-31, 33.

<sup>5</sup>AE D.

debt for the creditor in allegation 1.d, which Applicant denied. Allegation 1.d is found in favor of Applicant.

Applicant denied owing the student loans in SOR allegations 1.a (\$4,377) and 1.b (\$2,001). He indicated that he paid one loan in full through a deduction from his pay and that he was working on a resolution of the second loan. He provided a statement from the collection agent for one student loan, which reflects that he has made monthly payments on a loan debt of \$4,194 since November 2, 2010. As of November 2, 2011, he has paid \$3,110 on his debt. His payments reduced the principal by \$2,053 and the collection costs by \$575.<sup>6</sup> His payments also included \$482 in interest payments. He still owes approximately \$1,565 on this debt. His monthly payments vary, but at a minimum, he pays \$209 each month on this debt. His payments are shown on his wage statement. The debt should be resolved in less than one year. His payments relate to the debt in SOR allegation 1.a.<sup>7</sup>

As for his second student loan, Applicant stated that he had received a letter from the creditor asking how he wished to pay his debt. The creditor gave him the option of using his tax refund or a garnishment of his salary. He had not yet decided which option he would chose, but he is leaning towards using his tax refund to pay this debt. The July 19, 2011 credit report reflects that this debt has been reduced by \$400. The source of the payments is unknown, but the payment supports his position that he has paid on his student loans.<sup>8</sup>

The \$6,359 in SOR allegation 1.c and the \$272 debt in SOR allegation 1.e remain unpaid. Applicant does not have a definitive plan to pay these debts. The July 19, 2011 credit report indicates that both debts have a zero balance because the debts have been transferred or sold. The credit reports shows a date of last activity on the largest debt of 2006 and the smaller debt of 2005. The new creditor for the \$272 debt is the creditor identified in allegation 1.e. The owner of the \$6,359 debt is unknown, making it difficult for him to develop a payment plan until the new owner is identified.

The record contains no other negative information about Applicant. He works regularly, and there is no evidence of misconduct at work. Applicant has not received any financial counseling recently, but he met with a financial counselor after he and his wife separated in 2007. This counselor suggested he consolidate his debts, which he did. He paid his debts for a time.<sup>9</sup>

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<sup>6</sup>The July 19, 2011 credit report shows that the debt owed has been reduced by \$850. GE 5.

<sup>7</sup>GE 3-GE 5; AE D; AE E; Tr. 17-18, 27-28.

<sup>8</sup>GE 5; Tr. 17-18, 27-28.

<sup>9</sup>Tr. 24, 26.

## 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 financial problems when he and his wife separated in 2007. He also did not pay his debts when he was not working. Some 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; and
- (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.

While involuntary unemployment is a factor beyond an individual's control, voluntary unemployment is not. Applicant stated that his nine months of unemployment was his choice. Thus, AG ¶ 20(b) is not applicable.

Applicant has developed a repayment plan for his largest school loan and has paid about 70 per cent of this debt. He has also paid a portion of the smaller school

debt. He has tentatively decided to use his tax refund to pay this debt. Applicant is resolving two SOR debts. AG ¶ 20(c) applies to SOR allegations 1.a and 1.b.

### **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 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





Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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