



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



In the matter of:)
)
) ISCR Case No. 11-00178
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

September 21, 2011

Decision

HENRY, Mary E., Administrative Judge:

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

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on August 5, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on March 29, 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 and answered it on April 18, 2011. He requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on June 2, 2011. I received the case assignment on June 20, 2011. DOHA issued a Notice of Hearing on July 6, 2011, and I convened the hearing as scheduled on July 25, 2011. The Government offered exhibits marked as GE 1 through GE 6, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits marked as AE A through AE F, which were received and admitted into evidence without objection. The record closed on July 25, 2011. DOHA received the hearing transcript (Tr.) on July 29, 2011.

Procedural Ruling

Notice

Applicant received the hearing notice less than 15 days before the hearing. (Tr. 10.) 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.a - 1.c of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.d of the SOR¹ 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 44 years old, works as an engineering technician for a Department of Defense contractor. He began this job in August 2010 after four months of unemployment. From 1996 until April 2010, when he was laid-off, Applicant worked as a heavy equipment operator and concrete laborer for a paving and excavating company.²

Applicant married his first wife in October 1996, and they divorced in January 2001. He has two sons from this marriage, who are ages 17 and 13. His sons live with

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; Tr. 21-22.

his former wife. He married his present wife in March 2006. His wife has two daughters. One of his step-daughters is married with two children, and the other step-daughter is 15 years old and in high school.³

Applicant filed for bankruptcy under Chapter 7 of the United States Bankruptcy Code in 1994 after he was laid-off from a job that paid him well. He obtained other employment which paid him a salary almost 50% lower than his previous salary. With his lower salary, he was unable to pay his credit card debt. He estimated that the court discharged between \$6,000 and \$8,000 of credit card debt.⁴

As a result of his divorce in January 2001, Applicant lacked sufficient income to pay his child support, family health insurance, living expenses, and accumulated debts from his marriage. Because the court did not divide the payment of the marital debts and his former wife refused to pay the debts, he filed a second bankruptcy in September 2001. The court discharged his unpaid debts under Chapter 7 in early 2002. Applicant estimated that 70% of his unpaid debts related to medical bills from hernia surgery for him and medical treatment for his former wife. He did not have health insurance when these bills were incurred.⁵

Applicant's second wife purchased a house for \$150,000 in 2004 before they married. After their wedding, she titled the house in both names. In 2007, they obtained a \$50,000 equity loan on the house and made improvements in their 30-year-old house. In 2009, they began to experience problems with paying their mortgage and unsuccessfully tried to work with the lender. They stopped the payments in 2010. The bank foreclosed on the house in September 2010. The foreclosure resolved the mortgage loan on this property, but not the home equity loan.⁶

Applicant's employer reduced his work hours from 40 hours a week to between 20 and 30 hours a week, causing a decline in his income. In April 2010, after 14 years of employment, the company laid him off, along with about 75% of its work force because there was no work in the construction industry. During this same period of time, his wife's employer stopped paying her a shift differential, which resulted in a loss of \$200 a month in household income. Applicant remained unemployed for four months.⁷

Applicant currently earns \$1,329 biweekly in gross income and \$774 in bi-weekly net income on his basic pay. He also earns shift differential and hazardous duty pay,

³GE 1; Tr. 21, 23.

⁴GE 4; Tr. 25, 34.

⁵GE 4; Tr. 24-25, 34-36.

⁶Ge 1; GE 2; GE 5; Tr. 26-28, 37-41.

⁷GE 1; GE 3; Tr. 22, 27.

which increases his monthly income. His additional pay can increase his net income by as much as \$450 bi-weekly. His wife earns \$1,900 in bi-weekly gross pay and \$1,449 in bi-weekly net pay. She also receives \$300 a month in child support. Their net monthly income totals \$4,746. Just prior to the hearing, his wife obtained a part-time job, where she anticipates earning \$700 a month in gross income. Applicant anticipates her part-time job will increase their net monthly income by approximately \$500. Their basic monthly expenses total \$4,042, including rent, two car payments, a line of credit payment, and two small debts. Applicant pays \$691 a month in child support, which is deducted from his pay as a voluntary garnishment. They have sufficient income to pay their basic monthly living expenses and sufficient discretionary income to pay unexpected expenses.⁸

Applicant's reduced hours in 2009, his wife's loss of income in 2009, and his subsequent job loss in 2010 impacted his ability to pay his credit card debts as well as his mortgage. The credit reports of record reflect that he worked with his creditors and reached agreements to settle his past-due debts on four accounts and satisfactorily paid eight other credit accounts. He recently negotiated a settlement on his home equity loan of \$57,600 (SOR ¶ 1.c) and paid the agreed-upon amount in April 2011 with a money gift from his mother-in-law. He and his wife are saving money to pay the remaining two small debts in the near future. His taxes are filed and up to date. He met with a financial counselor about 18 months ago. He saves money for his retirement in a 401K account, and he has a separate savings account for unanticipated expenses.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

⁸AE C - AE E; Tr. 49-53.

⁹Response to SOR; GE 2; G 5; AE F; Tr. 28-32, 62-64, 68.

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 when his income declined and he could not pay his debts. He fell behind in his mortgage and the lender foreclosed on his property. 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 filed for bankruptcy after he lost his job in 1996 and after his divorce in 2001, negative events which impacted his life and his finances. By 2009, he again found himself in financial difficulty because his employer reduced his working hours by almost one-half, which simultaneously reduced his income proportionally. His wife lost her differential pay at the same time. They tried to resolve their financial problems with the mortgage lender, but were unsuccessful. Although the bank foreclosed on their house, they contacted other creditors and worked with them to resolve their debts. They successfully resolved four past-due accounts.

Applicant met with a financial counselor 18 months ago. He saves money for his retirement and to pay unexpected expenses. He and his wife have a savings account. When they realized that they still owed money on the home equity line, they contacted the creditor and reached a settlement agreement. They paid this debt in April 2011. They have sufficient income to pay all their monthly living expenses and to save. They are not living beyond their income. Applicant has mitigated the Government's security concerns under AG ¶¶ 20(b), 20(c), and 20(d), but not AG ¶ 20(a).

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.¹⁰ Applicant twice filed bankruptcy to eliminate excessive debt after circumstances beyond his

¹⁰In 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.

control created financial problems for him. After his second bankruptcy, he and later his wife managed their finances until his work hours decreased, and she lost her shift differential. In less than a year, he lost his construction industry job of 14 years because of the current economic downturn. As a result of his job loss, the mortgage lender foreclosed on his house. However, Applicant remained current on his car payments and a personal loan. He also contacted the creditors on past-due accounts and resolved his indebtedness. He chose not to file bankruptcy, but to pay his debts. He recently negotiated a settlement on his unpaid equity line of credit. He pays his bills and lives within his monthly income. He has money left over each month, part of which he saves to pay for unexpected expenses, such as car repairs and needs of his children. Applicant is financially stable and fiscally responsible. His past debts are resolved and not a security concern.

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

MARY E. HENRY
Administrative Judge