



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



In the matter of: )  
)  
) ISCR Case No. 11-02321  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

03/16/2012

**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 July 30, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on October 26, 2011, 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 November 3, 2011. He answered the SOR on December 8, 2011, and he requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on January 3, 2012. I received the case assignment on January 9, 2012. DOHA issued a Notice of Hearing on January 10, 2012, and I convened the hearing as scheduled on January 25, 2012. The Government offered exhibits marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant and two witnesses testified. He submitted exhibits marked as AE A through AE II, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on February 2, 2012. I held the record open until February 24, 2012, for Applicant to submit additional matters. Applicant timely submitted AE JJ through AE VV, which were received and admitted into evidence without objection. The record closed on February 24, 2012.

### **Procedural Ruling**

#### **Notice**

Applicant received the hearing notice less than 15 days before the hearing. 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. (Tr. 12.)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.d, 1.f, and 1.g. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.e, and 1.h - 1.q of the SOR.<sup>1</sup> 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 49 years old, works as a trainer for a Department of Defense contractor. He served in the United States Army and retired as a sergeant first class in 2007 after more than 21 years of active duty. During his years of service, Applicant received a Meritorious Service Medal, eight Army Commendation Medals, five Army Achievement Medals, a Joint Service Achievement Medal, five Good Conduct Awards,

---

<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).

a National Defense Service Medal with a bronze star, and numerous other medals and ribbons. In 2001, he was selected as the NCO of the year in the Transportation Corps. He received an honorable discharge from the Army in April 2007. While serving in the Army, he sustained a severe broken ankle during training with Special Forces. With this injury and other service-connected disabilities, the Veteran's Administration (VA) awarded him disability retirement income.<sup>2</sup>

Applicant graduated from high school. He married in 1988. He and his wife divorced in 2010. His daughter is 23 years old, and his two sons are 21 and 17 years old. His oldest son lives with him and his youngest son lives with his former wife. His daughter lives in another state. His oldest son attends college and is a military reservist, who will be deployed in October 2012 for one year.<sup>3</sup>

When Applicant returned from an out-of-state assignment In August 2008, his wife had moved out their house with their younger son and most of the household furnishings. He moved to a smaller house with his older son and daughter. His wife started divorce proceedings in December 2008, necessitating the retention of a divorce lawyer. In 2009, upon the recommendation of his divorce lawyer, Applicant retained a bankruptcy lawyer with the intent to resolve his financial problems by filing bankruptcy.<sup>4</sup>

Applicant's bankruptcy lawyer recommended that he stopped paying his credit card debts. He stopped paying on many of his credit cards, but not all credit cards. Although he paid the bankruptcy attorney \$3,850, the attorney never prepared or filed a petition for bankruptcy on behalf of Applicant. He eventually learned that his bankruptcy attorney had quit working for the law firm, that another attorney in the firm had taken ill, and that only one attorney remained to manage the workload. He discharged this firm and received a refund of some of his fee payment.<sup>5</sup>

About the same time, Applicant learned that his divorce attorney missed a court date in his divorce proceedings. He discharged this attorney and hired another divorce lawyer, who completed his divorce case. His second divorce attorney recommended against filing for bankruptcy. Applicant followed his recommendation, deciding to pay his past-due debts. In 2009 and 2010, as a result of his divorce, Applicant paid \$16,000 in attorney's fees for himself and \$6,000 to his wife's attorney as ordered by the court. He borrowed against his 401k account to pay some of these bills.<sup>6</sup>

---

<sup>2</sup>GE 5; AE I - AE K; AE JJ; Tr. 32-37, 43-44.

<sup>3</sup>GE 1; Tr. 47-48.

<sup>4</sup>GE 5; Tr. 38-39.

<sup>5</sup>GE 5; AE VV; Tr. 39-40.

<sup>6</sup>GE 5; AE VV; Tr. 40-41.

When the issues in his divorce resolved, Applicant incurred the following expenses: child support payments of \$765 a month, which will end in May 2013; spousal support of \$800 a month until July 2015; back retirement of \$12,714 to his wife, which he is paying by allotment at the rate of \$250 a month; and medical and dental insurance costs. His wife receives 44% of his military retirement check. His divorce also affected his 2009 federal taxes. His deductions changed, which resulted in a federal tax liability of \$6,000. He paid \$250 a month on this debt for more than 18 months. The Internal Revenue Service (IRS) applied his 2011 tax refund to this debt, which is now paid in full.<sup>7</sup>

Applicant earns \$6,459 a month in gross income from his current employer. Besides deductions for taxes and social security, medical and dental insurance premiums are deducted from his pay as well as \$765 for child support, \$800 for spousal support, and his 401k loan payment. His monthly net income from his employer is \$2,690. Applicant receives \$2,312 in gross retirement income and \$748 in net retirement after deductions, including his wife's portion of his retirement benefit and the \$250 monthly payment for benefits due as determined by the court in his divorce. He also receives \$1,687 in disability income from the VA. Applicant's net monthly income totals \$5,125. His total net monthly expenses, including payment of past-due debts, as of April 2012 is \$3,962. His monthly expenses includes a \$200 education loan, which he cosigned with his daughter and she cannot pay, and a \$335 truck loan payment for his son, who is attending school and is working part time. His son will assume responsibility for this payment when he deploys in October 2012.<sup>8</sup>

During his efforts to locate creditors identified in SOR debts, Applicant discovered several debts that were not his. The information he obtained from the creditors under his social security number showed a name different from his and an address in a city where he had never lived. Because he thought his identity had been stolen, he filed a police report in December 2011 and a complaint with the Federal Trade Commission in November 2011. A fraud alert is listed on his January 18, 2012 credit report. He also disputed the debts in SOR ¶¶ 1.h (\$116), 1.i (\$72), 1.j (\$124), 1.n (\$256), and 1.o (\$250) as fraud. The creditor for SOR debts 1.h, 1.i, and 1.j investigated Applicant's dispute and agreed to remove the debts from his credit report in letters dated November 27, 2011. The record contains no evidence as to when he submitted a dispute letter to the creditor for SOR debts 1.n and 1.o. One of these creditors advised him by telephone that it did not have any accounts under Applicant's social security number. Applicant did not receive a response from the other creditor to his dispute.<sup>9</sup>

Applicant's father died in July 2007. He and his father had the same first and last name, but a different middle name. Applicant identified several items on his credit

---

<sup>7</sup>GE 5; AE II; AE N; AE LL; Tr 41.

<sup>8</sup>GE 5; AE O; AE P; AE R; AE S; Tr. 43-44, 47, 75.

<sup>9</sup>AE EE; AE FF; Tr. 58-59, 65-66.

reports, which he believed were his father's accounts. It does not appear that any of the SOR debts belonged to his father.<sup>10</sup>

The SOR identified 17 purportedly continuing delinquencies as reflected by credit reports from 2010 and 2011, totaling approximately \$75,911. 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.

After reviewing the credit reports dated August 4, 2010, August 29, 2011, November 16, 2011, January 18, 2012, and the SOR, I have compiled a list of the total debts owed, including any duplicate entries. I find that Appellant's actual debts are as follows:<sup>11</sup>

<b>SOR ¶</b>	<b>CREDITOR</b>	<b>AMOUNT</b>	<b>STATUS</b>	<b>EVIDENCE</b>
1.a	Credit Union	\$16,000.00	Payment plan, paying \$250 month	GE 5; AE W; AE NN; AE OO
1.b	Collection account	\$ 6,421.00	Payment plan, paying \$100 month	GE 2; AE X; AE Y; AE PP; AE QQ
1.c	Collection account	\$ 9,043.00	Payment plan, paying \$100 month	GE 2; AE Z
1.d	Credit card	\$ 2,367.00	Payment plan, paying \$100 month	GE 2; AE AA; AE TT; AE UU
1.e	Credit Union	\$ 3,300.00 <sup>12</sup>	Paid	Response to SOR; AE BB
1.f	Collection account	\$ 5,533.00	Payment plan, paying \$100 month	AE CC; AE RR; AE SS
1.g	Bank credit card	\$ 6,405.00	Paid	AE DD; AE KK

<sup>10</sup>GE 1; GE 5; AE F; AE HH; Tr. 63-65.

<sup>11</sup>GE 2 (Credit Report, dated August 4, 2010); GE 3 (Credit report, dated August 29, 2011); AE HH (Credit report, dated January 18, 2012).

<sup>12</sup>The original balance on this debt was \$7,375. (AE BB). Applicant began payments on this debt in July 2010 and made regular payments of \$200 and a final payment of \$1,575 in December 2011. Response to SOR; GE 5.

1.h	Phone bill	\$ 116.00	Challenged, deleted	AE EE; AE FF; Tr. 58-59
1.i	Phone bill	\$ 72.00	Challenged, deleted	<i>Id.</i>
1.j	Phone bill	\$ 124.00	Challenged, deleted	<i>Id.</i>
1.k	Credit card	\$ 242.00	Paid	Response to SOR attachment; GE 2; AE HH; Tr. 62
1.l	Credit card	\$ 6,268.00	Same as 1.b	GE 2; AE X; Tr. 62-63
1.m	Credit card	\$ 8,760.00	Same as 1.c	GE 2; AE Z; Tr. 62-63
1.n	Cable bill	\$ 256.00	Denies; identity theft	Tr. 63-65
1.o	Cable bill	\$ 250.00	Denies; identity theft	<i>Id.</i>
1.p	Company credit card	\$ 5,533.00	Same as 1.f	GE 2; AE CC; Tr. 67
1.q	Collection account	\$ 5,221.00	Resolved	AE GG

Applicant believes that debt identified in SOR ¶ 1.q is resolved. This account appears only on the August 4, 2010 credit report. It is not listed on the August 29, 2011; November 16, 2011; and January 18, 2012 credit reports. The reasons for the absence of this debt is unclear, as the debt is not old enough to automatically fall off his credit report. The credit reports of record show two other paid debts with this collection company. The December 1, 2011 letter in AE GG confirms one paid debt with this collection company from 2002. This letter does not indicate another debt with the creditor. This debt is resolved.<sup>13</sup>

Applicant has not received credit or debt counseling, although sometime ago he attended financial counseling through the military. He advised that he is paid every two weeks. Thus, In March 2012, he will receive a third paycheck, which he plans to use towards the payment of debts. He also advised that he plans to use any remaining tax refund towards debt resolution.<sup>14</sup>

<sup>13</sup>GE 2; GE 3, AE HH, and the Response to the SOR; Tr. 67-69.

<sup>14</sup>AE Q; Tr. 77.

Applicant's performance evaluations reflect his performance as meeting or exceeding expectations on multiple criteria. A work colleague and friend testified on his behalf. His witness described Applicant as a "very competent instructor," who lives a modest lifestyle and does not drink alcohol. His witness considers him trustworthy, dependable, reliable, and honest. He submitted three letters of recommendations from friends, co-workers, and one former supervisor. All praise his job performance and dedication. He works well with others. They recommend him for a security clearance.<sup>15</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, 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

---

<sup>15</sup>AE A through AE E; Tr. 81-86.

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.

Applicant developed significant financial problems when he and his wife separated and divorced. The costs related to his divorce resulted in many unpaid debts. 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.

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 and his wife separated and began divorce proceedings. From August 2008 until early 2010, he directed his income towards paying his lawyer fees and attaining new housing for him and his two older children. His first divorce lawyer recommended that he file bankruptcy as a means to resolve his debts. The bankruptcy lawyer told him to stop paying his credit cards, which resulted in his unpaid debts. Both lawyers failed to properly represent Applicant, causing additional financial problems for him. His second divorce lawyer advised him not to file bankruptcy. Applicant followed this advice and began to resolve his debts in 2010, starting with the credit union debt identified in SOR ¶ 1.e, which he completed

paying in December 2011. His divorce resulted in a \$6,000 tax debt. He did not ignore this obligation; rather he immediately worked out a payment plan with the IRS. He fully resolved this debt in February 2012.

Applicant paid three SOR debts (1.e, 1.g, 1.k) and his federal tax debt totaling approximately \$20,000. With these debts paid, he developed a payment for five more debts listed in the SOR (1.a-1.d, 1.f) and is compliant with the terms of his payment plans. He challenged five SOR debts because the debts did not belong to him and were the result of fraud. The three large debts in SOR ¶¶ 1.l, 1.m, and 1.p, totaling \$20,561, duplicate the debts in SOR ¶¶ 1.b, 1.c, and 1.f.

While Applicant has not received recent financial counseling, the evidence of record reflects that he has taken control of his debts and has an effective plan to resolve his remaining unpaid debts. He is not required to pay all his debts or be debt free to hold a security clearance. He has shown a good faith effort to resolve his debts, one at a time, and has a meaningful track record of debt payment. Applicant has mitigated the Government's security concerns under AG ¶¶ 20(a)-20(d).

### **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 this conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems spiraled out of control when his wife moved out of the marital home and filed for divorce. He not only incurred extensive attorney fees for his divorce, he also paid a bankruptcy attorney \$3,850. During this time, he paid living expenses for himself and his two older children. He has complied with all the financial terms of his divorce. At the same time, he has worked to resolve his debts, two or three at a time. He still has five debts to pay. These debts are under a payment plan, and he has sufficient funds to each month to pay his agreed payment amounts or more. He has demonstrated that he is financially responsible, and he has shown a meaningful track record for debt resolution.

Applicant has assimilated into post-military life and has been recognized for his hard work and trustworthiness. He received extensive training and has a good record of commendable duty performance during and after his military service. He continues to provide some support to his oldest son, while he attends college, and to his daughter as she begins her adult life. Most significantly, he has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. He has a reasonable and manageable payment plan for his debts. His 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 as he has demonstrated financial responsibility.

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.q:

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