



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



In the matter of:)	
)	
)	ISCR Case No. 11-03157
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

04/02/2013

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 completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on July 13, 2010. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on November 2, 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 acknowledged receipt of the SOR on November 19, 2012. He submitted a notarized, written response to the SOR allegations dated December 14, 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 January 18, 2013. Applicant received the FORM on January 28, 2013. 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 March 27, 2013. The Government submitted eight exhibits, which have been marked as Items 1-8 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 the factual allegations in ¶ 1.a of the SOR. His admission is incorporated herein as a finding of fact. He denied the factual allegations in ¶ 1.b of the SOR, with explanation.¹ 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 49 years old, works as a technical writer for a Department of Defense contractor. He began his current employment in November 2009. Applicant worked part-time for a large retailer from October 2003 until February 2008, when he left the company for personal reasons. He returned to working at this company in September 2008 and worked with this company until October 2009, in two different states. He again left his job for personal reasons. From February 2000 until February 2009, Applicant worked full-time as a purchasing manager for a manufacturing company. The manufacturing company laid him off in February 2009 when the business closed. When he accepted his current job, Applicant moved his family to another state several hundred miles away.²

Applicant graduated from college in December 1988 with a bachelor's degree. Applicant married his first wife in 1989, and they divorced in 1999. He has a 21-year-old son and a 16-year-old daughter from this marriage. Applicant married his current wife in

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).

²Item 5.

2007. They have two daughters, ages 5 and 3. He also has a stepdaughter, who is 13 years old and lives with him. His wife receives \$240 a month in child support for her.³

Applicant earns \$5,801 a month in gross income and receives \$4,172 a month in net pay. His wife receives \$790 a month in net pay. Including child support, his total net monthly household income is \$5,202. His monthly expenses total \$2,995, leaving approximately \$2,200 a month for miscellaneous expenses and debt payment. Since meeting with the Office of Personnel Management (OPM) investigator, Applicant paid a \$1,000 bank overdraft of his wife's and paid the remaining balance on his car debt. He pays monthly on one credit card, intending to pay down the balance. He and his wife no longer use credit cards.⁴

The SOR identifies two unpaid debts. Allegation 1.a concerns a \$5,760 credit card which became past-due when Applicant lost his job in 2009. In July 2010, Applicant negotiated a payment plan with the attorney for the collection creditor. Shortly thereafter, Applicant began paying \$100 a month on this debt, which is included in his monthly expenses. With his answers to the interrogatories, Applicant attached a copy of a letter dated March 18, 2011, which he received from the creditor's attorneys. The letter shows a balance of \$5,238 and noted that his post-dated check will be processed as directed by Applicant. Between July 2010 and March 2011, Applicant had reduced his debt by \$522. The May 2012 credit report shows a balance due of \$3,838, which indicates a debt reduction of \$1,400. Applicant attached to his SOR response a letter dated November 19, 2012 again stating that his post-dated check will be processed as instructed. Applicant hand wrote on this letter a note, indicating the creditor's attorney advised him that his current balance was \$3,098, which reflects a \$740 reduction in his debt balance.⁵

Applicant told the OPM investigator that he purchased a house in April 2007. He obtained a mortgage loan for \$140,000 with a monthly payment of \$1,200. He advised the OPM investigator that he fell behind in the payments in 2008 after he lost his job. Applicant moved out of his property in October 2009, and the mortgage holder foreclosed on the property around May 2010. Shortly thereafter, a real estate agent contacted Applicant and asked him to participate in a "cash for keys" program. In August 2010, he met the real estate agent. They conducted a "walk-through" of his house, and he gave her the keys to the house. He has not had any contact with the mortgage lender or the realtor since August 2010. He no longer has any control over this property.⁶

³Item 5; Item 6. When he met with the Office of Personnel Management investigator, Applicant advised that his wife received \$240 a month in child support. Item 6. He did not list this money on his personal financial statement. Item 6.

⁴Item 6.

⁵Items 4, 6, and 7.

⁶Item 6.

In his response to interrogatories, Applicant attached a copy of a mortgage statement dated February 9, 2012. The statement contained a box on loan information and loan activity. The loan information box shows a principle balance, an interest rate, unpaid late charges of \$1,764, and zero balances for the remaining categories. The loan activity box for December 2011 and January 2012 reflects an escrow advance of \$1,410, negative \$0 for hazard or miscellaneous fees, and zero balances for the principal, interest, and forbearance amounts. There is no demand for payment in these boxes. The bottom of this page shows a payment stub, indicating a past due amount of \$55,308, a current payment of \$1,306 due, and a total payment of \$58,496 due on March 1, 2008. This document contains conflicting information. However, the demand for payment is dated 2008 and the zero balance information on the principle and interest is dated 2011 and 2012.⁷

The August 2010 credit report reflects that the mortgage company foreclosed on this loan and “reclaimed collateral to settle defaulted mortgage,” and identifies an account owner which is different from the mortgage lender. This credit report shows a balance of \$139,947 and a past due amount of \$27,693. The May 2012 credit report indicates that the mortgage lender foreclosed on this loan with a past-due balance of \$52,000. It also lists the account owner as a different entity from the mortgage lender.⁸

In his December 2012 response to the SOR, Applicant advised that he called the account owner for information and that the account owner advised him that he did not owe it any money. The account owner also gave Applicant the name of three companies which manage defaults for it. Applicant contacted all three companies, who indicated that they did not have any information about an account in Applicant’s name. He again called the account holder, which referred his inquiry to a supervisor. He left a message for the supervisor, but had not received a response.⁹

The 2010 credit report reflects that Applicant paid a \$1,500 tax lien within a month of the filing in 2009; he paid a past-due credit card, a past-due utility bill, and brought current two accounts which were 30 days late. He also resolved an unpaid medical bill identified by the OPM investigator, which is not listed in the SOR.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

⁷Item 6.

⁸Items 7 and 8.

⁹Item 4.

¹⁰Items 6, 7, and 8.

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 when he lost his job and could not pay his living expenses. The SOR alleges 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 arose because he lost his job in 2008.¹¹ He was the sole support of his family of five, and he had support obligations for his children from his first marriage. Without a full-time job, he was unable to pay his mortgage, and the mortgage lender foreclosed on it. He worked part-time, which did not provide sufficient income to meet all his expenses. He moved his family for employment, which is a necessary expense. As his finances improved, he began to resolve his unpaid debts. AG ¶ 26(b) is partially applicable.

¹¹Applicant indicated to the investigator in 2010 that he lost his job in 2008, but his e-QIP reflects his job ended in February 2009. This discrepancy is not clearly explained. However, Applicant has consistently stated that his job loss created his financial problems. Thus, I find that he lost his job in 2008.

Applicant paid several small debts and negotiated a payment plan in 2010 for the debt in SOR ¶ 1.a. He has paid about 50% of this debt and is in compliance with the payment plan. He is not receiving financial counseling and given his current finances, financial counseling is not necessary. He lives within his monthly income and pays his bills. He has sufficient income to met his monthly expenses. Concerning the mortgage debt, the mortgage lender reclaimed the property in 2010 to satisfy the debt. The mortgage lender sent Applicant a loan statement in 2012, which showed a zero balance on the loan principle and made no demand for payment of any monies due. Applicant made telephone calls to the account owner and three other companies in an effort to determine if he owed any money on his mortgage loan. None of these entities had accounts in his name or showed that he owed additional funds on his mortgage loan. He has resolved this debt. AG ¶¶ 26(c) and 26(d) apply.

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.¹²

¹² 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

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 number of years Applicant worked two jobs to support his family. He paid his living expenses and his bills until he lost his full-time job in 2008. With his job loss and accompanying major reduction in household income, he fell behind in his mortgage loan payment. He paid most of his remaining expenses, but not all. He accepted a new job in a new locale, necessitating moving expenses. Since relocating and resuming full-time work, Applicant has worked slowly to reduce his old debts. His income is improving and his monthly expenses are declining. He has established a track record for debt reduction. His largest debt, the mortgage loan, has been resolved by the reclamation of his house through foreclosure, leaving him without any ownership rights in the property. The mortgage lender or account owner have not contacted him to advise him that additional money is owed, nor have they made a demand for payment.

Applicant has focused his attention on providing a stable domestic environment for his family. Most significantly, he has taken affirmative action to pay or resolve the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) While the 2012 credit report indicates money still owed on his mortgage loan, this debt cannot be a source of improper pressure or duress because the account owner, the mortgage lender, and three other companies deny that he owes them money. 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. His past debts are insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

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.

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.

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

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