



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



In the matter of:)	
)	
)	ISCR Case No. 11-03277
)	
Applicant for Security Clearance)	

Appearances

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

October 24, 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 December 17, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on April 19, 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 April 28, 2011. He answered the SOR on May 9, 2011 and requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on June 20, 2011. I received the case assignment on June 27, 2011. DOHA issued a Notice of Hearing on July 11, 2011, and I convened the hearing as scheduled on July 28, 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 D, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on August 11, 2011. I held the record open until August 29, 2011, for Applicant to submit additional matters. On August 29, 2011, I issued an order granting Applicant's request for an additional 14 days to submit the requested information. Applicant timely submitted AE E through AE K, which were admitted without objection. The record closed on September 12, 2011.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice on July 18, 2011, 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.a, 1.b, and 1.d - 1.h of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegation in ¶ 1.c 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 50 years old, works as a commercial truck driver for a Department of Defense contractor. He began this employment in November 2009. He does not work 40 hours each and every week. His work hours vary and are dependent upon availability of work. He begins a new position, as an orientation instructor, for his

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).

employer in August 2011. He anticipates steadier work hours and more regular pay with this position.²

Applicant enlisted in the United States Army in 1978 at age 17. He received an honorable discharge from the Army in January 1992. In 2000, he reenlisted in the Army. He sustained a serious back injury, and the Veteran's Administration (VA) awarded him a 70% service-connected disability in 2005. During his years in the Army, Applicant held a security clearance without any mishandling of classified information or allegations of security violations. The Army awarded him three Army Commendation Medals, four Army Achievement Medals, four Good Conduct Medals, a National Defense Service Medal with a bronze star, and several ribbons.³

Applicant and his wife married in 1979. They have two adult children, a daughter, age 30, and a son, age 29. When his wife's sister died in the early 1990s, they assumed responsibility for raising her three year old daughter. He has four grandchildren. His oldest daughter is married and lives independently. His son is looking for work, and his younger daughter sometimes lives at home with her child. He and his wife provide some financial help to their children each month.⁴

Applicant left the Army in 1992 so that his wife could attend dental school. She completed dental school in 1996 and went on active duty with the United States Public Health Service (USPHS) in January 1997. She continues to work for USPHS as a dentist. Applicant worked and cared for their children while his wife attended school.⁵

Applicant's financial problems began in 1997, just after his wife graduated from dental school. USPHS stationed his wife in an area where his work opportunities were limited, and the educational opportunities were not very good. He and his wife decided to send their children to private school. This education was expensive and strained their budget. He traveled long distances to work. By 2000, they had unpaid bills. They paid these bills in 2005. Applicant and his wife lived in separate housing at different locations when he was in the military, and she worked for USPHS. In 2003, he received a \$4,550 military star loan to pay for moving the two households into one house in one location. He anticipated that the Army would reimburse him for the costs of moving, but it did not.⁶

After he left the Army in 2003, he experienced problems with unemployment. He decided to get a commercial driver's license, which increased his employment

²GE 1; AE E; Tr. 54.

³GE 1; AE A; Tr. 18-21, 45, 51-52.

⁴GE 1; AE G; Tr. 18, 35-36, 42.

⁵Tr. 40-41.

⁶AE C; Tr. 22-24, 40-41.

opportunities. His work in the trucking industry has not been steady. He attributed his current financial problems to his sporadic employment and managing two households the past. He and his wife combined their income to pay their bills.⁷

After the hearing, Applicant provided an updated financial statement, which his wife prepared.⁸ Applicant verified that he earned a total of \$921 income for June and July 2011 as a truck driver. He also received \$830 a month in VA disability benefits. His wife earned \$7,180 in basic pay in June 2011. Her basic pay increased in July 2011 to \$7,580 a month. She also received \$1,620 a month in basic housing allowance, \$224 a month in basic allowance subsistence, and \$750 a month in variable special pay. Her net monthly income increased from \$7,463 a month to \$7,736 a month with her pay increase.⁹ Their monthly expenses total \$6,998 a month and include \$400 to family members, \$804 to the debt in SOR ¶ 1.f, a \$721 car payment, \$900 in credit card payments, \$1,081 for school loans, \$275 for a personal loan, \$986 for housing costs, \$350 for food, \$670 for gasoline and insurance, \$350 for entertainment, and a \$400 donation. His monthly car payment is \$470 a month and vacation resort is \$334 a month, leaving a net remainder of \$764 a month without the income from his new job. Applicant anticipates he will earn \$3,000 a month in gross income from his new job.¹⁰

The SOR identified eight purportedly continuing delinquencies as reflected by credit reports from 2009 and 2011, totaling approximately \$21,512. 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.

Concerning the debts listed in the SOR, Applicant verified that two past-due debts listed in SOR ¶¶ 1.a and 1.b are current. He verified that he has reduced the balance owed on the \$15,085 debt in SOR ¶ 1.f to \$7,150 and is paying \$800 a month on this debt. He contacted this creditor in 2010, developed a payment plan, and complied with the terms of his plan. He also verified that the \$169 debt in SOR ¶ 1.h is paid. His credit reports also reflect that many of his debts are paid regularly.¹¹

⁷Tr. 23-24, 54, 62-64.

⁸The personal financial statement previously provided by Applicant contained confusing information about his monthly income and expenses. Thus, updated information was requested. GE 4; Tr. 66-84.

⁹Applicant testified to a substantial yearly bonus given to his wife, which has not been verified. Tr. 79.

¹⁰AE E - AE H; Tr. 47-48.

¹¹GE 4- GE 6; AE B, AE H - AE K; Tr. 30-31, 59-60.

The debts in SOR ¶¶ 1.c (\$117), 1.d (\$3,062), and 1.e (\$92) relate to medical treatment Applicant received for a concussion he suffered in 2004. His wife's insurance provides the primary health coverage for him, as he is listed as her dependent. Initially, the hospital submitted the medical bill for payment under his name, which the carrier rejected. The hospital resubmitted the bill under her name. The insurance carrier asked him for more information, which he provided, and told him his bill would be paid. The insurance carrier sent a new letter, telling him a different entity was now his carrier, then advised a second time that another entity was his carrier. He thought the bill had been paid until he met with the security clearance investigator. After this meeting, he contacted the medical insurance carrier, which referred him to the creditor now holding the debt. He has made numerous calls to his insurance carrier, which has told him that it will pay the bill. He has also contacted the liaison at his wife's base, who is working with him on resolving the problems with payment of these bills, which total \$3,271. Applicant believes that he owes \$334 on the \$882 debt in SOR ¶ 1.g, which relates to a timeshare he purchased in 2005 and is trying to sell. He did not verify the status of this debt.¹²

Applicant's supervisor provided a letter, recommending Applicant for a security clearance. His supervisor advised that he properly handled the secure loads and never compromised the safety of the loads. His wife described him as loyal and dependable, a man of integrity.¹³

Applicant expressed a desire to meet with a financial counselor at the hearing. He had not done so as of the hearing. His wife manages the family income and expenses.¹⁴

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,

¹²Tr. 26-29, 31-32, 66-67.

¹³AE C, AE D.

¹⁴Tr. 81-82.

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's financial problems first developed in the late 1990s when he and his wife moved to her first assignment with the USPHS. After he left the Army in 2003, he could not find work, which created new financial problems for he and his wife. 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:

- (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's wife's work with USPHS created financial problems in the later 1990s. By 2005, they had paid these debts. Since this time, he experienced unemployment and underemployment. He and his wife supported two households for a period of time, which created additional expenses and strained their budget. He obtained his commercial driver's license to improve his ability to work because the job opportunities where he lived were limited. His wife's income steadily increased over the last 14 years, and he recently started a job with a steady paycheck. The mitigating conditions in AG ¶¶ 20(a) and 20(b) are applicable.

Applicant contacted his largest creditor and developed a payment plan in 2010. He has complied with his payment plan. He also caught up his past-due balances on his car accounts and continues to pay his monthly payments. He paid one other debt and has been in contact with the medical bill creditor and his health insurance carrier to resolve his unpaid medical bills from his concussion. He has sufficient income each month to pay his monthly expenses and to pay his debts. Mitigating condition AG ¶

20(c) is partially applicable because not all his debts are resolved, and he has not received financial counseling. AG ¶20 (d) applies only to the debt in SOR ¶ 1.f.

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.¹⁵ When his

¹⁵ 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 reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the

wife first began working as a dentist for the USPHS, they incurred debts because they needed to send their children to private school, and Applicant had to travel to work. By 2005, he paid these debts. Since 2005, Applicant's work opportunities have vacillated, creating some problems with payment of a few bills. His wife manages the household finances. With her current income, they have more than sufficient income each month to pay their bills. With the level of her income, there is some concern about how they fell behind in their car payments. However, these payments are current. Applicant's steadier income from his new job will help stabilize his monthly income and provide a cushion for unexpected expenses.

Applicant contacted his largest creditor in 2010 and agreed to a substantial monthly payment of \$800. This is a substantial monthly payment, which he pays. He and his wife pay their other creditors on a monthly basis and are not behind in these bills. His credit reports show that he pays many of his bills in a timely manner and has. He did not pay the listed medical bills because he thought his insurance carrier had paid the bills. Since he learned that he was wrong, he has contacted the medical insurance carrier and the creditor about the bills. He also sought assistance through his wife's base with working with the medical insurance carrier to resolve this debt. He has taken responsibility for his debts and worked to resolve them for the last year. Most significantly, he has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) His efforts reflect that he is not a security concern. His unpaid medical bills of \$3,200 are not a security concern as he is working to resolve these bills, and thus, this debt 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 Applicant's income is now more stable than it has been for the last few years. (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.

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:

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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.

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
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	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