



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



In the matter of:)	
)	
)	ISCR Case No. 11-03429
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

January 13, 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 denied.

Statement of the Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on June 10, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on July 28, 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 August 11, 2011. He answered the SOR on August 23, 2011. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on October 26, 2011. I received the case assignment on November 1, 2011. DOHA issued a notice of hearing on November 17, 2011, and I convened the hearing as scheduled on December 7, 2011. The Government offered exhibits marked as GE 1 through GE 7, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits marked as AE A through AE C, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 15, 2011. I held the record open until January 6, 2012, for Applicant to submit additional matters. Applicant timely submitted AE D through AE F, which were received and admitted without objection. The record closed on January 6, 2012.

Procedural Rulings

Notice

Applicant received the hearing notice at or near the required 15 days under ¶ E3.1.8 of the Directive. After a discussion of his notice rights, Applicant agreed to proceed with the hearing and affirmatively waived and notice defect. (Tr. 8)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 26 years old, works as a military trainer for a Department of Defense contractor. He began his current employment in April 2010, after working as a systems engineer for another Department of Defense contractor for two years. His manager states that Applicant's work ethic, behavior and interaction with military customers and other contract instructors is above reproach. His manager describes Applicant as a model employee and an expert in his field. Applicant's manager does not believe Applicant's financial problems make him vulnerable to bribery for any information he may have.¹

Applicant graduated from high school in 2003. He enlisted in the United States Army in February 2004. After training, he served two years overseas, where he achieved the rank of staff sergeant (E-5). The Army honorably discharged him in February 2008. During his military service, he received a good conduct medal, two

¹GE 1; AE A; Tr. 20.

Army achievement awards, a national defense service medal, a Korean service medal, and several ribbons. Applicant is engaged to marry.²

When he returned from overseas, the Army stationed Applicant at a base where all base housing was being used for returning soldiers from Iraq or Afghanistan. As a result, the Army required him to live off base. He rented an apartment and purchased a used vehicle for \$20,000. He also incurred other debts. While in the Army, he paid his major expenses, but slowly started to fall behind in some bills. When he left the Army, Applicant enrolled in college, using the G.I. bill. His \$1,200 a month income under the G.I. bill did not pay all his living expenses and school costs. He obtained a part-time waiter job to help with his expenses, but this income was not sufficient. If he worked more, he could not keep up with his school work. If he decreasead his school schedule, his income under the G.I. bill declined. By the summer of 2008, he could not pay his bills.³

In August 2008, Applicant moved to his parents' home in another city because he could no longer pay his bills, including his truck payment. Over the next few months, his parents paid two credit cards, a utility bill, and a phone bill, for a total of \$4,800. They also brought one credit card current at a cost of \$113. After bringing his truck payment current in 2008, his parents made numerous calls to the creditor for his truck with the goal of paying his debt. After talking with a friend, who is the president of a credit union, they offered the creditor \$13,000, based on the amount of remaining debt and blue book value of the truck. Their friend considered this a reasonable and fair offer. The creditor refused their offer and demanded an additional \$500, which they did not have. The creditor also told them they could return the truck if they would not pay the amount demanded. Based on the information given to them by the creditor, they returned the truck to the creditor the next day. Applicant and his mother do not indicate that the creditor told them there would be a balance remaining on his debt after they returned the truck. At the end of 2008, Applicant and his parents believed that they had resolved his debt issues based on the bills he received. His credit reports reflect several paid delinquent bills. He did not obtain a copy of his credit report at this time. In 2009, the creditor for his truck called him and asked for \$7,000 to settle his debt. He did not have the money, and he did not ask his parents for the money.⁴

In 2009, Applicant began living on his own, and in 2010, he moved to another state. He rented an apartment in City A, where he works, for \$979 a month. In July 2011, he moved to a smaller apartment, which reduced his rent to \$809, plus \$100 for electricity. In September 2011, he moved to City B to live with his fiancée and now commutes to work in a car pool, about 88 miles each way. He spends approximately \$280 a month commuting, and he will continue to pay the rent on his apartment in City

²GE 4; Tr. 20.

³Tr. 40-47.

⁴GE 2; GE 5- GE 7; AE F; Tr. 20, 25-27, 39-41.

A until his lease expires. Since moving to City B, he discontinued his cable and internet service in City A (\$129 a month). His current expenses total \$2,329 and include \$809 for rent in City A, \$500 for rent in City B, \$220 for utilities in both cities, \$120 for cell phone, \$230 for car expenses, \$250 for food, and \$200 for miscellaneous items such as haircuts or car repairs. His net monthly income is approximately \$2,589. His monthly remainder after paying his bills is \$250. With this money, he paid one credit card debt not listed in the SOR and made a partial payment on another debt listed in the SOR (¶ 1.c).⁵

Applicant met with an attorney in his parents' hometown in September 2011 to discuss several of his debts. The attorney advised him that the apartment complex identified in SOR ¶ 1.e (\$1,628) was required by state law to provide him an itemized bill explaining why all or part of his security deposit was being retained within 30 days of his vacating the apartment. The attorney also advised Applicant about his rights for specific information to verify his debts. Applicant advised that he is working with this attorney concerning his problems with the apartment complex, but had not provided proof that he has retained the attorney or instituted legal action against the apartment complex. He has asked the apartment complex for information about the basis of his debt. As of the hearing, he had not received a response.⁶

Applicant contacted the local office of a national nonprofit about debt consolidation in early November 2011. Based on his conversation, he started collecting and assembling information on all his bills and debts. At the hearing, he indicated that he had information on 80% of his SOR debts. He has been unable to determine the actual creditor for the \$35 medical debt in SOR ¶ 1.f. The credit reports do not contain any contact information for this creditor. He met with a credit counseling representative after the hearing. There is no indication that he hired this company nor did he provide any information showing a developed plan of action to resolve his debts. It is unclear at this time what he will do to resolve his debts. Applicant did contact the creditor in SOR ¶ 1.c (\$449) and reached an agreement to pay the creditor \$112.25 a month for four months. He authorized the creditor to withdraw the payments from his checking account. The creditor withdrew the first payment in September 2011, but has not withdrawn the remaining payments. Applicant has not again contacted the creditor to resolve the payment issue.⁷

Applicant has not resolved the debts listed in the SOR. He pays his current monthly expenses and lives within his current monthly income.

⁵GE 3; Tr. 31-38.

⁶AE E; Tr. 28-29, 49-50.

⁷GE 5-GE 7; AE B; AE D; Tr. 23-24.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Appellant developed significant financial problems after his discharge from the military in 2008 because of bills he incurred while in the military. Most 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.

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 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 has not shown a track record for reducing the debts listed in the SOR. He did pay one collection debt not listed in the SOR, and the credit reports show several additional old debts paid at some time. He has not provided a definitive plan for paying his debts. He did contact the creditor in SOR ¶ 1.c and made arrangements to resolve this debt. He made one payment, but did not follow up with the creditor when the subsequent payments were not withdrawn from his checking account. He gets some credit under AG ¶ 20(d) for contacting this one creditor. Applicant also gets credit under AG ¶ 20(c) for seeking credit counseling in November 2011 and for meeting with a credit counselor in December 2011. He does not get full credit because he has not presented a plan for resolving his debt or resolved any SOR debts.

Concerning the truck debt, Applicant’s parents made a reasonable and fair offer to pay this loan in 2008. The bank rejected their offer, demanding a small amount of additional funds. The bank then told them they could return the truck, but did not advise them that a significant debt would result when they returned the truck. The actions of the bank reflect bad faith on its part and are the reason for the large debt in SOR ¶ 1.h. Thus, Applicant is not entirely responsible for this debt because he could not control the actions of the bank. He is only entitled to partial mitigation credit under AG ¶ 20(b) because he has not contacted the creditor recently to resolve this debt.

In summary, Applicant is entitled to some mitigation credit based on the actions he has taken, but because he has not taken control of his debts, he has not mitigated the Government's security concerns under Guideline 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.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant performed his duties very well in the military, which led to quick promotions. Likewise, his current employer praises his work skills. When his financial problems first began, Applicant was still in the military. After he left the military and started college, he lost control of his finances as he lacked sufficient income to pay his monthly bills. With the assistance of his parents, several of his debts in 2008 were resolved. His parents made a fair and reasonable offer to resolve his truck loan, which the creditor rejected. On the advise of the creditor, they returned the truck, not realizing a significant balance would remain on this debt.

Applicant lives within his current income and pays his current bills. He has talked with a credit counselor and an attorney about his bills. He, however, has failed to take definitive action on even his small debts. He is still developing a debt resolution plan,

which should resolve his small debts within a short time. He needs to show that he has done more on his debts.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge