



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



In the matter of:)
)
) ISCR Case No. 11-04351
)
Applicant for Security Clearance)

Appearances

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

08/15/2012

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 completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on August 16, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on January 12, 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 received the SOR on January 23, 2012 and answered it on February 8, 2012. Applicant requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on April 12, 2012. I received the case assignment on May 1, 2012. DOHA issued a Notice of Hearing on May 10, 2012, and I convened the hearing as scheduled on May 31, 2012. The Government offered exhibits (GE) marked as GE 1 through GE 6, which were received and admitted into evidence without objection. Applicant and one witness testified. Applicant submitted exhibits (AE) marked as AE A through AE M, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 12, 2012. I held the record open until July 2, 2012, for Applicant to submit additional matters. On June 28, 2012, I issued an order granting Applicant until July 23, 2012 to submit post-hearing documents. Applicant timely submitted AE N - AE V, which were received and admitted without objection. The record closed on July 23, 2012.

Findings of Fact

In his Answer, Applicant denied the factual allegations in ¶¶ 1.a - 1.f of the SOR.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 additional findings of fact.

Applicant, who is 60 years old, works as a lead engineer in telemetry systems for a Department of Defense contractor. Applicant has worked for his employer for 34 years and has held a security clearance for many years. He has an associate degree in electronic technology.²

Applicant and his wife married in 1980. They do not have children. They currently own three horses, but are planning to sell two of the horses. They also have two dogs, two cats, and two birds.³

Applicant and his wife purchased their home in 1985. In 1996, physicians diagnosed Applicant's mother-in-law with Crohn's disease. After two surgeries and a stroke, his mother-in-law required extensive care. Along with his wife and her brother, Applicant and the family made a decision to care for his mother-in-law at the mother-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).

²GE 1; GE 5; Tr. 48-49.

³GE 1; Tr. 28, 49, 57-58.

law's home. Applicant's brother-in-law became the primary care giver, and Applicant's wife supplemented his care on a daily basis. Because of his mother-in-law's limited income, Applicant and his wife incurred significant expenses paying for her medical care and medicines. His brother-in-law did not work for two years, using his savings for expenses. Applicant's mother-in-law died in 1998.⁴

Applicant's wife and brother-in-law inherited his mother-in-law's duplex house, with a mortgage. They determined that repairs were needed and began the work. On top of the existing mortgage of approximately \$30,000, Applicant's brother-in-law, who was scheduled to return to work as a merchant seaman, obtained a \$50,000 mortgage on the house for repairs. As a co-owner, his wife cosigned the mortgage note. A short time later, Applicant's brother-in-law died unexpectedly. Applicant and his wife retained ownership of this property, which they rented. They also increased the mortgage debt to \$100,000. Twice, the renters stopped payment of the rent, leaving Applicant to pay the mortgage. Nonpayment of rent on these two occasions totaled \$5,200. Each time a renter moved out, Applicant and his wife spent money repairing and painting the property, sometimes as much as \$3,000 before they rented it.⁵

Applicant's wife listed this property for sale in 2003. After two and one-half years, the property did not sell, and his wife removed the property from the sales market. His wife listed the property for sale a second time in 2007. After a year, the property did not sell, and she again removed it from the sales market. Applicant's wife listed this property for sale a third time in 2012, and it sold. Settlement on this property occurred on May 25, 2012. They received \$144,000 in proceeds from the settlement after paying the \$65,000 balance on the mortgage and settlement costs. The proceeds are now in their bank account.⁶

In 2004 and 2005, Applicant and his wife sustained damage to their home and the duplex from hurricanes. His wife estimated their costs to repair the properties at more than \$15,000. By 2009, Applicant and his wife had incurred significant credit card debt and could not pay their bills. In January 2009, they hired a debt consolidation company (Company A) and paid this company \$5,000. Based on the recommendation of the debt consolidation company, Applicant and his wife enrolled in credit counseling classes offered near their home. These classes helped them understand that they must keep track of their money. They developed a budget in 2009 and continue to follow it. They pay all their current bills each month.⁷

In July 2009, Applicant and his wife hired a new company (Company B) to manage their debts because the first company had not paid any of their debts. They

⁴Tr. 29-32, 49-50, 64-66, 69-70.

⁵Tr. 29-33, 61.

⁶AE K; Tr. 34-35, 59-61, 67-69.

⁷GE 5; AE C, p. 2; Tr. 38, 45-47.

signed an agreement with this company on July 10, 2009. The company agreed to help them resolve 10 debts. They agreed to a payment schedule, which required Applicant to pay \$1,423 a month beginning in July 2009. Their payments increased to \$1,812 a month in July 2010. They timely made the required payments through the hearing date. After the sale and settlement on the duplex, Applicant and his wife directed Company B to resolve their remaining unpaid debts.⁸

Applicant earns \$7,334 in monthly gross income and \$3,945 in net monthly income. His wife's net monthly income totals \$4,675 for a total net household income of \$8,620. Their monthly expenses total \$7,207, including \$1,285 on their house mortgage, \$844 on a home equity line, \$461 mortgage on undeveloped land, \$1,812 on their debt payment plan, \$400 for food, \$400 for animal feed, \$750 on gas for their vehicles, \$605 on utilities, and \$650 on other expenses. Applicant has approximately \$1,400 in discretionary income each month. Applicant and his wife own two cars and two horse trailers, on which they owe no debt. The large horse trailer, valued at \$25,000, is for sale.⁹

The SOR identifies six debts, totaling \$83,675. The debts in SOR ¶¶ 1.a (\$9,042) and 1.b (\$14,946) are two credit cards belonging to the same creditor. The creditor obtained a judgment against Applicant and his wife on both of the debts in October and November 2010. In December 2010, Applicant and his wife agreed to pay \$200 a month and \$150 a month on each judgment until paid in full. Applicant referred the settlement agreement and payment to Company B, which included the new owner of the debts as part of Applicant's payment plan. Applicant made the first payment on these debts on December 27, 2010, through Company B, and continued to make the required payment each month as agreed. The spreadsheet from Company B shows these two debts as a legal settlement in process. After the hearing, Applicant paid the remaining balance on these debts.¹⁰

The SOR debts in ¶ 1.c (\$19,000) and ¶ 1.d (\$14,000) are included in Applicant's payment plan with Company B. No payments or resolution had been made on these debts by Company B as of the hearing. However, prior to the hearing, Applicant directed Company B to negotiate a resolution of these debts. After the hearing, Applicant paid these two debts from the proceeds of the house sale. Post-hearing documentation from Company B indicates that Applicant paid all debts in its program.¹¹

SOR debts in ¶¶ 1.e (\$19,000) and 1.f (\$7,687) are to the same creditor. The creditor in SOR ¶ 1.f sought a judgment in court. Applicant and the creditor reached a settlement agreement, whereby Applicant agreed to pay the creditor \$803 a month for

⁸AE B - AE F; Tr. 35, 38, 61-62,.

⁹AE A; AE F; Tr. 47, 56-58, 90-91.

¹⁰GE 2; GE 4 - GE 6; AE E; AE G - AE J; AE P; AE Q; Tr. 39, 84-85.

¹¹GE 2; GE 4; GE 6; AE E; AE I; AE J; AE O; AE S; AE T; Tr. 41, 79-83.

five months. Applicant has complied with this payment plan. Applicant settled and paid the debt in SOR ¶ 1.e after the hearing.¹²

Since retaining the services of Company B and with its help, Applicant paid and settled five other credit card debts with an approximate balance of \$100,000. None of these debts are listed in the SOR.¹³

Applicant submitted a character reference from a long-time friend. She described him as a person of good character, who does not gamble or have an alcohol problem. She believes him to be reliable and trustworthy. She did not indicate any knowledge of his financial problems.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, 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

¹²GE 3; GE 4; AE L; AE V; Tr. 36, 42, 85.

¹³AE I; AE J; Tr. 39-42, 79-83.

¹⁴AE M.

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;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant and his wife developed significant financial problems after her mother and brother died over 10 years ago, and his wife inherited her mother’s home. They

used credit to pay their bills, which exacerbated their financial problems. These three 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 and his wife assumed responsibility for many medical expenses related to the care of his wife's mother in the two years prior to her death in 1998. One year later, Applicant's brother-in-law died unexpectedly, leaving Applicant's wife as the sole owner of his mother-in-law's duplex. This ownership included substantial debt incurred by his late brother-in-law. They repaired, rented, and repaired the property for a number of years, as their attempts to sell it failed twice. They recently sold this property. In 2004 and 2005, their home and the duplex sustained damage from hurricanes, some of which was not covered by insurance. These events are financial problems resulting from factors beyond their control. AG ¶ 20(b) is partially applicable because Applicant's use of credit to pay debt is not reasonable. AG ¶ 20(a) is not applicable because Applicant's debts are recent.

However, AG ¶¶ 20(c) and 20(d) are applicable in this case. When Applicant and his wife realized that their finances were out-of-control, they hired a debt consolidation company to help them with paying their debt. After retaining the services of a debt consolidation company, Applicant and his wife enrolled in credit counseling classes which helped them to understand how to manage their finances. They developed a budget and continue to follow their budget. They now pay their monthly expenses in full each month, and their finances are under control. With the assistance of their debt consolidation company, they made a good faith effort to contact their creditors and pay their unpaid debts. For three years, they have established a track record of paying their debts. Five debts not listed in the SOR are resolved. Four of six SOR debts are resolved or being resolved. Applicant has control over his finances and his debts. Applicant and his wife have mitigated the security concerns about the unpaid debts.

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. Applicant and his wife assumed responsibility for many of her mother's medical expenses during the last two years of her life. This decision started the slow downfall of their finances over the next ten years. They spent substantial money repairing and maintaining Applicant's mother-in-law's home after her death. They rented the home, but this caused problems with unpaid rents and repairs, adding to their financial burdens. Their first two efforts to sell the property did not work. Hurricanes damaged their home and the duplex, creating additional financial burdens for them. As their financial problems increased, so did their debt, as they used credit to pay debt.

In 2009, Applicant and his wife realized their financial problems were out of control and sought help to manage their finances. With the help of a debt consolidation company, they took control of their debts. They learned to manage their monthly income and to pay their monthly bills. They have resolved many of their large debts. They sold the duplex and used the proceeds from this sale to pay the remainder of their debts. They are selling two horses and the large horse trailer. For the last three years, they have worked to reduce their debts and their monthly living expenses. They made significant progress on their goal by the hearing and recently eliminated all their old debt, even though Applicant is not required to be debt free to hold a security clearance. Applicant and his wife have learned to live within their monthly income and to manage their finances. Applicant has taken affirmative action to pay or resolve the delinquent debts that raised security concerns. (See AG ¶ 2(a)(6).) Thus, his past 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. His decision to take control of his debt three years ago reflects his understanding that he must manage his income and expenses, and it reflects his good judgment.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	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