



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



In the matter of:)	
)	
)	ISCR Case No. 11-05020
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank Jr., Esquire, Department Counsel
For Applicant: *Pro se*

01/18/2013

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 May 6, 2010. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on March 23, 2012, detailing security concerns under Guideline F, Financial Considerations, and Guideline J, Criminal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 4, 2012, and he answered it on April 24, 2012. Applicant requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA), which was received. Department Counsel was prepared to proceed on June 5, 2012. DOHA assigned this case to another administrative judge on July 27, 2012. Since Applicant was out-of-the-country for several months and a hearing could not be scheduled until his return, DOHA reassigned the case to me on October 12, 2012. DOHA issued a Notice of Hearing on October 26, 2012, and I convened the hearing as scheduled on November 16, 2012. The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A and AE B, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 29, 2012. I held the record open until December 17, 2012, for Applicant and the Government to submit additional matters. The Government submitted one additional document, GE 5, which is received and admitted without objection.¹ Applicant timely submitted AE C and AE D which were received and admitted without objection. The record closed on January 8, 2013. An email dated January 8, 2013 is admitted as AE E.

Procedural Ruling

Notice

Applicant received the hearing notice on November 5, 2012, less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the notice 15 days before the hearing. Applicant affirmatively waived his right to the 15-day notice. (Tr. 9)

Findings of Fact

In his Answer to the SOR, Applicant denied all the factual allegations in the SOR.² After a complete and thorough review of the evidence of record, I make the following findings of fact.

¹Department Counsel included documents received from Applicant in the Government's exhibits. The documents from Applicant are copies of AE A and AE B, which were admitted into evidence at the hearing. Applicant did not bring copies of these exhibits to the hearing, since he had submitted copies of these exhibits by email to Department Counsel just before the hearing. Department Counsel did not receive the documents before the hearing as he had departed on travel for this hearing.

²When 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).

Applicant, who is 53 years old, works as operations food service manager for a Department of Defense contractor. He began his current position in April 2010. His performance evaluations reflect meets or exceeds on his skills and performance. His performance evaluations also show that he has successfully developed a highly effective team, which is achieving extraordinary results. His employer praises his work skills.³

Applicant is not married. He married his first wife in 1982, and they divorced in 1986 in State A. He has a 29-year-old son and 27-year-old daughter from this marriage. As part of his divorce degree, Applicant paid child support, initially directly to his wife, then as a payroll allotment through State A. He married his second wife in 1990, and they divorced in 1998 in State B. He has a 20-year-old son from this marriage, for whom he also paid child support. The debts in the SOR did not arise out of his marriages and divorces.⁴

Appellant started working in the restaurant industry at age 14 as a dishwasher. He attended college and earned an Associate of Arts degree in culinary arts. He is a certified executive chef. His work assignments have been in several areas of the United States in the last 10 years, as well as three years in Japan and one year in Afghanistan.⁵

The largest debt listed on the SOR is \$140,000 owed to State A for child support payments for his two oldest children (SOR ¶ 1.m). Applicant denies owing this debt. When he worked for two large hotel companies, his child support payments were deducted from his pay and forwarded to State A for disbursement.⁶ After learning about the debt, Applicant contacted an attorney. His attorney advised him to seek a copy of the payment records from his past employers and to make concurrent arrangements to pay the claimed arrearage. His attorney told him that once Applicant showed the previous payments, he would assist Applicant in obtaining a reimbursement of his current payments. Applicant wrote his previous employers more than one year ago, but he has not received any information from the employers. His previous employers tell him that they are looking for the archived information on his pay. He made arrangements for bi-weekly payments to State A, which began in 2010. To date, he has verified payment of more than \$31,600 between May 2010 and November 8, 2012. He indicated that State A levied his bank account and took \$30,000 from the bank account in January 2010, which is not verified.⁷

³GE 1; AE B.

⁴GE 1; GE 2; Tr. 18, 21-23.

⁵GE 1; Tr. 18.

⁶Applicant stated that the payroll deductions stopped when his children turned 18. When he was not working, the payments would stop. He would pay his arrearage when he returned tot work. Tr. 24, 32.

⁷SOR; AE D; Tr. 24-26.

The May 2010 credit report lists all the SOR debts, except the child support debt. Most of the small debts relate to utility, cable, or telephone bills generated after Applicant moved to another work location. Applicant believed he had paid his bills in full when he moved. He never received any additional bills from the original creditor. When Applicant learned about the debts on his credit report during his security clearance investigation, he disputed the debts online with the credit reporting companies. He did not dispute the debts directly with the original creditors. The May 2010 credit report reflects that he disputed the debts in SOR ¶¶ 1.c to 1.g and 1.i. The December 2011 credit report also shows that he disputed the debts in SOR ¶¶ 1.c to 1.g. This credit report does not list the debts in SOR 1.i (\$12,557 medical bill), 1.j (\$935 cable bill), 1.k (\$178 telephone bill), 1.l (\$178 telephone bill), and the child support arrearage. Applicant submitted a credit report dated October 22, 2012. The debts in SOR ¶¶ 1.a (\$433 medical bill), 1.b (\$281 utility bill), and 1.h (\$313 telephone bill) are listed as unpaid and not challenged. The debts in SOR ¶¶ 1.c to 1.f are shown as owed, after being updated from his dispute. The \$710 debt in SOR ¶ 1.g remains disputed. The debts in ¶ 1.i through ¶ 1.l and the child support arrearage are not listed in this credit report. Applicant disputed two other non-SOR debts listed on the May 2010 credit report, which have been removed from his credit report. He has not received a direct response from the credit reporting agencies.⁸

Applicant denies ever seeking medical care at the metropolitan hospital facility issuing the \$12,557 bill. The May 2010 credit report shows that this hospital account as opened in August 2008. Applicant's e-QIP reflects that he moved from the metropolitan area to State C in July 2008. The May 2010 credit report lists, as an alias, a name similar, but not the same as Applicant's and past-due child support in State C with a zero balance and closed. He denies owing any child support in State C. He also denied ever using the alias and disputed this listing with the credit reporting companies. This name is not listed on the more recent credit reports.⁹ Applicant's testimony, that he disputed the SOR debts because the debts were not his, is supported by the information in the May 2010 credit report. I find that Applicant successfully disputed the \$12,557 medical bill, two non-SOR debts, and the alias name.¹⁰

Applicant stated that he will pay the SOR debts if the debts are his. Based on his testimony at the hearing, Applicant does not appear to understand that his disputes have been resolved against him and that he owes these debts. The SOR identified 13 purportedly continuing delinquencies as reflected by credit reports from 2010 and 2011, totaling approximately \$159,000. 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

⁸GE 3; GE 4; AE A; Tr. 20-21, 28-29, 33-36.

⁹GE 3; GE 4; AE A; Tr. 21-23, 26, 28, 30, 33-36.

¹⁰GE 3; GE 4; AE A; Tr. 22-23, 30, 35-36.

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.

In December 1997, the police in State B arrested and charged Applicant with driving under the influence (DUI) of intoxicating beverages and operating a vehicle on a suspended or revoked operator's license. The SOR and bench warrant reflect a guilty finding on both counts in January and February 1998.¹¹ The court document indicates that a bench warrant was issued, possibly on September 21, 2011, for "failure to comply" with an address in State B. Applicant denies any knowledge of this warrant. He states that he paid the \$467 fine assessed by the court. He has not lived in State B for more than 10 years. When he tried to renew his passport in January 2010, children support issues with States A and B arose. He contacted State B and learned about the warrant. The individual in State B to whom he spoke advised that the warrant had been resolved. He received his passport. Likewise, when he contacted State B's child support office in the past, this office advised him that there were no outstanding warrants for him. After the hearing, Applicant called this county to determine the status of this warrant. He was advised that there were no outstanding warrants. The county advised that it would forward this information to him, but he had not received confirming information as of December 14, 2012. He advised by email dated January 8, 2012 that he was in Afghanistan and had not yet received any documentation.¹²

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.

¹¹GE 5 contains a second bench warrant document for a November 1998 arrest, with a notation "contains outdated chg/bail infor." This arrest is not contained in the SOR and will not be addressed in this decision. GE 5; SOR.

¹²GE 5, p.. 1; AE E; Tr. 19-20, 36-40.

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 because of child support arrearage. His change of job locations resulted in additional small, unpaid bills. 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The debts in the SOR are old and occurred some time ago. Applicant pays his current bills. The child support may have occurred as a result of record keeping errors by State A, an unusual circumstance as Applicant paid his child support through his pay check. Applicant was surprised by debt, which he did not know existed until his bank account was levied and the funds were taken by State A. He made arrangements with State A to pay this debt. His payments began in May 2010 and have continued regularly since that date. Applicant has reduced his child support debt by over \$62,000. This debt will not occur again as, he pays monthly on his debt, his children are grown, and no additional debt beyond this amount will be incurred or owed. AG ¶¶ 20(a), 20(c) and 20(d) apply to SOR allegation 1.m.

Applicant challenged six SOR debts because he did not owe these debts. Some debts may belong to the person whose name is listed as Applicant's alias on the May 18, 2010 credit report. Applicant had a legitimate basis to dispute these debts,

particularly the medical bill as he had not received medical care in August 2008. His disputes resulted in the removal of several debts from his credit report, including the \$12,557 medical bill. Several non-SOR debts were also removed after his challenges. AG ¶ 20(e) applies to SOR allegations 1.h and 1.i.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

The record reflects that there is an outstanding arrest warrant for a DUI in 1998. This is the only criminal offense in the record for Applicant. The Government established its case under AG 31 ¶¶ 31(a) and 31(c).

The Criminal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 32(a) through 32(d), and the following are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

The DUI arrest occurred more than 13 years ago. The warrant indicates a guilty finding on the arrest charges. The warrant is for a “failure to comply,” but it does not specify the sentence or fine that Applicant did not perform or pay. Applicant states that he paid the \$467 fine levied by the court many years ago. Since late 1998, Applicant has not been arrested for any criminal conduct. He works steadily and has worked for the United States in a war zone on two separate occasions. He has mitigated the concern about this old court matter under AG ¶¶ 32(a) and 32(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.¹³

¹³In 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.

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's financial problems began with his job moves and bills not reaching him. He was unaware of his debts for many years. When he learned about the debts, he disputed many of them, which resulted in the removal of several debts, including the \$12,557 medical bill. His credit report also listed an alias for him, a name which he denied. He disputed this name with the credit reporting companies, which removed it from his credit report. Some of the removed debts may belong to this individual. Some debts may have been removed because of age.

Applicant has a good record of commendable duty performance at his current position. His three children are grown and on their own. While he denies owing child support, he followed the advice of his attorney and arranged a payment plan with State A. He has sought child support payment information from two employers, but he has not received any information because it has been sometime since he worked for these employers and their records are not readily available. Most significantly, he has taken affirmative action to pay the largest SOR debt raising security concerns and has established a track record for paying the debt. (See AG ¶ 2(a)(6).) The remaining unresolved debts in this case total less than \$6,000. These debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid; it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While some debts remain unpaid, they are insufficient to raise security concerns in light of all the circumstances in this case. (See AG ¶ 2(a)(1).)

The warrant is problematic given the original date of his arrest and court hearing. The warrant appears to have been issued more than 12 years after his court date and does not identify what part of his original sentence he did not complete. Applicant's credible testimony that he paid the fines many years ago and that he has been told several times that there were no outstanding warrants in State B supports mitigation under the criminal conduct guideline.

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 and criminal conduct under Guidelines F and J.

Formal Findings

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-1m: For Applicant

Paragraph 2, Guideline J:

FOR APPLICANT

Subparagraph 2.a:

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