



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



In the matter of: )  
)  
) ISCR Case No. 11-06306  
)  
Applicant for Security Clearance )

**Appearances**

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

04/29/2013

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on July 1, 2009. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on July 13, 2012, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on August 14, 2012. He submitted a notarized, undated, written response to the SOR allegations and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on March 1, 2013. Applicant received the FORM on March 11, 2013. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response and additional documentation dated April 2, 2013. DOHA assigned this case to me on April 16, 2013. The Government submitted 11 exhibits, which have been marked as Items 1-11 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant exhibit A (AE A).

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.d, 1.e, and 1.f of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.c of the SOR.<sup>1</sup> He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 58 years old, works as an engineer for a DOD contractor. Applicant has worked in his current position since November 2002 and for his employer since 1982. He completed vocational and trade school in June 1975.<sup>2</sup>

Applicant and his wife married in 1975. They have a 33-year-old daughter and a 27-year-old son. They also have at least one grandchild. In 1994, Applicant's wife suffered two massive strokes, which left her permanently disabled and unable to work. Her illness and disability resulted in a 45% loss of household income and excessive medical bills. After three years of trying to pay these bills, they filed for bankruptcy under Chapter 7, and their debts were discharged.<sup>3</sup>

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<sup>1</sup>When 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).

<sup>2</sup>Items 4 and 5.

<sup>3</sup>Item 5; Item 10; AE A, p. 2.

Around 2004, Applicant's daughter and son-in-law were both unemployed and new parents. His wife helped pay their bills using credit cards. They also paid towards their son's college education expenses. By 2010, their credit situation had worsened. Applicant withdrew funds from his 401(k) to pay down the credit card balances. By this time, their credit cards were charging interest rates of 30%. He attempted to negotiate a reduced interest rate with the credit card companies, but the credit card companies refused because he was paying his bills.<sup>4</sup>

Applicant and his wife spoke with their accountant, who initially suggested bankruptcy, which they decided was not an option. The accountant then recommended they contact a debt negotiation company. In December 2010, they signed a contract with a debt negotiation company. This company agreed to resolve 12 debts, and Applicant requested that four debts be withheld from the plan. The company required Applicant to pay these down the balances on these four debts to under \$500 within six months or lose their contract. Applicant began paying this company \$2,000 a month in January 2011 and has made his payment each month. The company has resolved 10 of the 12 debts in the payment plan.<sup>5</sup>

The SOR identifies six unpaid debts. Based on the SOR and credit reports dated March 18, 2011, March 9, 2012, and February 26, 2013, the following are Applicant's debts as of July 13, 2012:

<b>SOR ¶</b>	<b>Type of Debt</b>	<b>Amount</b>	<b>Status</b>	<b>Evidence</b>
1.a	Credit card	\$ 6,122.00	Payment plan	AE A, p. A-2-1 & 2
1.b	Credit card	\$16,570.00	Payment plan	AE A, p. A-3-1 & 2
1.c	Credit card	\$ 1,176.00	Paid in settlement	AE A, p. A-4
1.d	Credit card	\$ 9,577.00	Settlement in negotiation	AE A, p. 2
1.e	Credit card	\$21,000.00	Paid in settlement	AE A, p. A-5
1.f	Mortgage (past-due)	\$11,793.00	Paid in full	Items 7-9; AE A, p. A-11

Applicant and his wife applied to their mortgage company for a loan modification. At this time, they paid around \$2,900 a month on their mortgage. They sought to reduce only the interest rate. In August 2012, the mortgage company advised them that their loan modification had been approved, and their new monthly payment for the next three months would be \$3,979. They declined and placed their home for sale. Their house

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<sup>4</sup>Item 4.

<sup>5</sup>Items 4, 6; AE A.

sold as a short-sale on April 5, 2012. They do not owe any balances on their first and second mortgages.<sup>6</sup>

Applicant prepared a personal financial statement in April 2012. At this time, he earned \$9,360 a month in gross income and \$8,190 a month in net income. His monthly expenses totaled \$7,635, leaving a monthly remainder of \$555.<sup>7</sup> His monthly expenses included his \$2,000 monthly payment to the debt negotiation company. He has sufficient income to meet his monthly living expenses.<sup>8</sup>

### **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.

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<sup>6</sup>AE A, p. 1, 4, A-7, A-8, A-11.

<sup>7</sup>Applicant's housing costs will change now that he sold his house. His new housing costs are unlikely to negatively impact his finances.

<sup>8</sup>Item 6.

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.

Applicant developed financial problems when he and his wife supported his unemployed daughter, son-in-law, and grandchild with credit cards as the method of payment. They became overwhelmed with their credit card payments, then fell behind in the monthly payments. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

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

Applicant and his wife assumed responsibility for their daughter's bills after the birth of their grandchildren because she and her husband were unemployed. While not directly related to them, as parents they felt a need to help their daughter, whose unemployment was beyond her control. When he realized his finances were out of control, Applicant withdrew funds from his 401(k) to pay down his credit cards. He called the credit card companies with a request for a reduced interest rate, which was rejected. Because these actions were insufficient, Applicant hired a debt negotiation and resolution company in December 2010. Through this company, Applicant paid two debts and is currently paying two debts. When he was unable to reach a reasonable loan modification of his mortgage, he listed his house for sale and recently sold it. He does not owe any money on his mortgages. Applicant has taken appropriate steps to resolve his debts. Some worked and some did not. With the help of the debt negotiation and resolution company, he has taken control of his debts and paid all but one debt. He has made a "good-faith" effort to resolve his debts. Mitigating conditions AG ¶¶ 20(b), 20(c), and 20(d) apply.

### **Whole-Person Concept**

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful

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

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.<sup>9</sup> His wife's severe illness in 1994 left them with many medical bills and an inability to pay these debts over time. They filed for bankruptcy in 1997 and started over financially. In 2004, their daughter and son-in-law were unemployed and new parents. Applicant and his wife provided their daughter and her family with financial support to their detriment. By 2010, Applicant realized that their debts were out-of-control. Applicant obtained from his 401(k) the money allowable by law and used it to pay down his credit card balances. He then sought a reduction in his credit card interest rates, but the credit card companies refused to reduced the interest rate. He refused to file a second bankruptcy. Instead, he hired a company to help him negotiate a resolution of his debts. For the last two years, he has paid approximately \$2,000 a month to this company, which has negotiated payment plans and settlements for debts owed by he and his wife. At the same time, he paid his monthly living expenses and did not incur more unpaid debts. Because his mortgage company would not provide him with a reasonable modification of his mortgage loan, he recently sold his house. He has established a track record for resolution of his debts. He has shown that he took control of his debts and his finances.

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<sup>9</sup>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.

His past indebtedness is not a security concern and there is little likelihood that he will incur debts of this type in the future.

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.

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MARY E. HENRY  
Administrative Judge