



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



In the matter of:)
)
) ISCR Case No. 11-07202
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

08/02/2013

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 December 10, 2010. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on February 22, 2013, 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 March 6, 2013. He submitted a notarized, written response to the SOR allegations dated April 1, 2013, 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 April 30, 2013. Applicant received the FORM on May 13, 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 dated June 25, 2013.¹ The Defense Office of hearings and Appeals (DOHA) assigned this case to me on July 17, 2013, which I received on July 18, 2013. The Government submitted 13 exhibits, which have been marked as Items 1-13 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibits (AE) A to T.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.g - 1.p, 1.t, and 1.w of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.c - 1.f, 1.q - 1.s, 1.u, 1.v, and 1.x of the SOR.² 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 54 years old, works in business operations for a DOD contractor. Applicant has worked for his employer since 1979. He has held a security clearance since August 2006. Due to the issues in this case, his employer revoked its authority giving him access to certain programs. His DOD clearance has not been revoked. The record lacks evidence of any security violations or mishandling of classified information.³

¹Applicant's response to the FORM was received by Department Counsel after more than 30 days. Department Counsel did not object to Applicant's late submission and has thus waived any timeliness objections.

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).

³Item 4.

Applicant graduated from high school in 1977 and attended college part-time, but he did not complete college. He and his wife married in November 1996. They have a son, who is 12 years old, and his wife has a 23-year-old daughter. The record does not reflect that Applicant has an alcohol or drug problem or a criminal record, but he did have past traffic violations, which are not alleged in the SOR.⁴

For many years, Applicant regularly worked overtime, which increased his income by 25%. He and his wife based their lifestyle on his higher income. His overtime ceased in October 2007, creating financial problems for him. He had insufficient funds to make all of his monthly payments, resulting in delinquent accounts. As a result, Applicant lost his house in foreclosure and accumulated significant credit card debt.⁵

Based on his personal financial statement prepared in October 2012, Applicant earned \$6,808 a month in gross income and \$4,462 a month in net income. His wife provided \$4,000 a month in net income for a total household net income of \$8,462. He listed his monthly expenses at \$6,115 plus debt payments of \$600 for a truck, \$202 for a debt, \$100 for a credit card, \$80 on a revolving credit account, and \$630 a month for past-due debts for total debt payments of \$1,612, leaving a net remainder of \$735.⁶

The SOR identified 22 purportedly continuing delinquencies as reflected by credit reports from 2010, 2012 and 2013, totaling approximately \$41,075. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

After reviewing the credit reports (CR) dated December 17, 2010, August 6, 2012, February 8, 2013, and the SOR, I have compiled a list of 22 debts owed, and the current status of each. I find that Applicant's actual debts are as follows:⁷

SOR ¶	CREDITOR	AMOUNT	STATUS	EVIDENCE
1.c	Judgment	\$ 1,182.00	Paid in 2009	Item 13, AE A

⁴*Id.*; Item 7. The Office of Personnel Management (OPM) investigator incorrectly identified several motor vehicle rules violations as criminal conduct in the summary of Applicant's interview on January 21, 2011. Item 7.

⁵Item 7.

⁶Item 8.

⁷ROI - Credit reports dated March 19, 2010.

1.d	Medical bill	\$ 322.00	Paid	AE C, AE Q show paid medical bills ⁸
1.e	Collection	\$ 149.00	Paid	AE H
1.f	Collection	\$ 181.00	Paid	AE E
1.g	Credit card	\$12,663.00	Unpaid	Item 13 ⁹
1.h	Credit card	\$ 1,201.00	Paid \$300, paying \$50 a month	AE A; AE S
1.i	Credit card	\$ 1,223.00	Unpaid	Items 3, 5, 6, 9
1.j	Credit card	\$ 2,558.00	Unpaid	Items 5, 6, 9
1.k	Credit card	\$ 4,062.00	Unpaid	Items 5, 6, 9
1.l	Credit card	\$ 1,223.00	Same as 1.j	Items 5, 6, 9
1.m	Collection	\$ 2,170.00	Sold to another lender, creditor unknown	Items 5, 6, 9
1.n	Collection Group	\$ 3,202.00	Unpaid	Items 5, 6, 9
1.o	Insurance debt	\$ 961.00	Unpaid	Items 5, 6, 9
1.p	Collection	\$ 2,159.00	Unpaid	Items 5, 6, 9
1.q	Gym membership	\$ 189.00	Unpaid	Items 5, 6, 9
1.r	Gym membership	\$ 1,389.00	Unpaid	Items 5, 6, 9
1.s	Collection	\$ 557.00	Paid	AE M
1.t	Credit card	\$ 658.00	Paid	AE K
1.u	Collection	\$ 727.00	Paid	AE A; AE L ¹⁰

⁸Applicant provided documents showing payment of a \$212 medical bill and a \$300 medical bill. While the documentation does not clearly reflect that these payments are for the only medical bill in SOR (¶ 1.b), his submitted information supports a finding this bill is paid.

⁹Applicant paid over \$3,000 on this debt in 2010 through garnishment. The balance reflects his payments as his original balance was \$16,384. He has not made any additional payments.

¹⁰Applicant provided documentation showing a \$50 payment in October 2012. In a handwritten note, Applicant indicated the bill was paid in full. He did not provide proof of payment in full. Given his other proof of bill payments, his statement is credible.

1.v	Collection	\$ 1,069.00	Paying; \$350 balance 4/1/13	AE G
1.w	Collection	\$ 863.00	Paid	AE N
1.x	Credit card	\$ 2,368.00	Paying \$200 a month.	AE A; AE M

Applicant provided documentation indicating that he paid the following debts not listed in the SOR: 1) Medical bill of \$212; 2) more than \$4,000 on the truck payment; 3) court debt of \$208; 4) \$65 collection debt; 5) \$178 collection debt; 6) \$224 in municipal bills; 7) \$565 personal loan; 8) \$300 medical bill; 9) \$500 on a collection debt of \$2,558; and 10) \$75 on a credit collection account. In his debt summary payment, he identified \$8,792 in paid debts, both SOR and non-SOR debts, plus \$4,500 on his truck and \$2,350 on other debts. Of his \$15,642 in documented debt payment, he has paid more than \$10,000 in non-SOR debts. Because the original creditors may have sold his debts, the relation between these debts and unpaid SOR debts cannot be determined. Applicant submitted a plan to continue the resolution of his debts. His plan includes continued payments on his truck until paid and two non-SOR debts, plus payments on allegations 1.h and 1.x. His plan reflects his efforts to pay a few debts at a time because he shows the debts he has paid and those he is currently working to resolve. There is no evidence that Applicant underwent credit counseling.¹¹

Applicant and his wife filed a Chapter 13 bankruptcy in 1995, which the court dismissed in April 1998. Nine days later, they filed a Chapter 7 bankruptcy petition. The court discharged their debts in September 2000.¹²

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,

¹¹AE A; AE C; AE D; AE F; AE I; AE J; AE O; AE P; AE Q.

¹²Items 10-12.

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 when he and his wife relied on his overtime income to pay bills and as a result of their spending habits. 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:

- (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.

The loss of routinely-earned overtime income is a factor beyond Applicant's control. AG ¶ 20(b) is only partially applicable because Applicant and his wife used credit cards to finance a lifestyle. Once the overtime income ended, their finances spiraled out-of-control, leading to serious debt problems.

Applicant has not received credit counseling. However, his current household income is sufficient to pay his customary and usual monthly living expenses. He has a plan to pay his past-due debts and has taken control of his debts. He has paid many of his debts and is working to resolve his remaining debts. He has made a good-faith effort to pay his debts as shown by his contacts and payments to creditors. Through his efforts, he has resolved many smaller debts and continues to make monthly payments on larger debts. Unlike his decision in the past to use bankruptcy as a means to resolve his debts, Applicant has accepted responsibility for his debts and is working to resolve his debts. AG ¶¶ 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.

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.

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 overextended their finances for some time. When his overtime work stopped and his income declined significantly, their finances spiraled out-of-control. They had substantial debt when they stopped the payments on their bills. To their credit, they decided against filing bankruptcy, accepted responsibility for their debt problems, and took control of their finances. Initially, some bills were paid through garnishment. Later, Applicant developed a reasonable plan to resolve his debts, a few at a time. He has followed his plan, resolving small debts first. He is working towards the resolution of larger debts. Most significantly, he has taken affirmative action to pay or resolve many of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6)) He is not required to pay all his debts to hold a security clearance, nor is he required to pay SOR debts first. For Applicant to hold a security clearance, he must show a meaningful track record for debt payment, and he has done so. Applicant's unpaid 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. Applicant and his wife lived beyond their financial means. They, however, accepted responsibility for their actions and created a plan to resolve their debts. They changed their spending habits and now live within their income. They are resolving all their old debts, a few at a time. Their budget reflects that they have dedicated a sum of money each month to pay old debts.

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
Subparagraphs 1.a-1.x:	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