



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-08403
	)	
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 denied.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on September 14, 2010. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on July 9, 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; 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 July 25, 2012, and he answered it on August 13, 2012. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). DOHA received the request, and Department Counsel was prepared to proceed on October 4, 2012. I received the case assignment on October 15, 2012. DOHA issued a Notice of Hearing on October 31, 2012, and I convened the hearing as scheduled on November 14, 2012. The Government offered exhibits (GE) marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant and two witnesses testified. He did not submit any exhibits. DOHA received the hearing transcript (Tr.) on November 26, 2012. I held the record open until December 5, 2012, for Applicant to submit additional matters. On December 4, 2012, he requested additional time to submit his documentation. The Government did not object. I granted Applicant's request, giving him until December 26, 2012, to submit additional evidence. Applicant did not submit any additional evidence. The record closed on December 26, 2012.

### **Procedural Ruling**

#### **Notice**

Applicant received the hearing notice 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. 8.)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also indicated that the debts in ¶¶ 1.b and 1.c of the SOR had been paid. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 31 years old, works as a mechanic for a Department of Defense contractor. He began his current employment in January 2009. His immediate and second level supervisors testified on his behalf. Both describe him as an outstanding employee with the most knowledge about their work. They consider him reliable, honest, dependable, and trustworthy. Both are aware that he has financial problems, but do not believe that his financial problems will impact his ability to manage classified information.<sup>1</sup>

Applicant graduated from high school. He served in the U.S. Air Force from October 2000 until January 2008. He received a Good Conduct Medal, an Air Force Commendation Medal, an Air Force Achievement Medal with two oak leaf clusters, a Meritorious Unit Award, Air Force Outstanding Unit Award with Valor Device with two

---

<sup>1</sup>Tr. 60 -71.

oak leaf clusters, a National Defense Service Medal, a Global War on Terrorism Expeditionary Medal, and numerous other medals and ribbons.<sup>2</sup>

Applicant married his first wife in 2004; they separated three months later; and they divorced in March 2006. Applicant and his wife married in April 2007. They have twin sons, who are seven years old, and her 11-year-old daughter lives with them. His wife does not work. Applicant recently started college. He received extensive training while in the Air Force.<sup>3</sup>

In 2007, Applicant purchased a house. Prior to moving to his new home, his landlord did a pre-inspection of the apartment for damage and found none. Later, the landlord changed his mind and decided \$296 in damages existed, which is the debt in SOR allegation 1.a. Applicant never received a bill from his landlord, although he left a forwarding address. Applicant left the Air Force in January 2008, after accepting a position with a start-up company. This position paid \$17.50 an hour and required him to move. Applicant decided to rent his house. He rented it for two months to a friend. He left the utilities in his name, anticipating that the bills would be paid by his friend, but the bills may not have been paid. His mortgage was \$680 a month. His rent in the new location was \$1,500. His wages were insufficient to allow him to pay his rent, mortgage, and other necessary living expenses such as food, utilities, and gasoline. Eventually, the mortgage company foreclosed on his property. He does not owe any money to the mortgage company.<sup>4</sup>

Applicant and his family lived with his parents for six months in 2008 because of his finances. Applicant accepted a job offer in another city with his current employer at a significantly higher salary. He relocated his family in January 2009 to their present residence, which has lower rent.<sup>5</sup>

Applicant attributes his current financial problems to his first marriage, the cost of moving a family of five twice in a year, and insufficient income from his job with a start-up company. Unknown to him, his first wife purchased furniture with a loan in his name. She worked and agreed to pay the monthly loan payment. When they separated, she took the furniture and eventually stopped the payments on the furniture. He believes he left a forwarding address on his utilities, cable, and other bills when he moved. He did not receive bills after he moved in 2008 and 2009.<sup>6</sup>

---

<sup>2</sup>GE 2; Tr. 17.

<sup>3</sup>GE 2; Tr. 17-20.

<sup>4</sup>GE 4; Tr. 21-24.

<sup>5</sup>Tr. 46-48.

<sup>6</sup>GE 2; Tr. 20-21, 38.

His wife's purse was stolen in 2007. She had her identification and his checkbook in her purse. The thief wrote several checks, which were not honored (SOR ¶¶ 1.b and 1.r). Applicant claims to have resolved these debts, but has not verified his payments. He asserts he paid the \$24 debt in SOR ¶ 1.c. and the debt in SOR ¶ 1.q, but he has not verified his payments. Applicant has not resolved any of the other debts.<sup>7</sup>

Three credit reports, dated September 17, 2010, February 5, 2011, and May 15, 2012 reflect that Applicant disputed the debts in SOR ¶¶ 1.j (\$920), 1.m (\$6,974), and 1.o (\$463). Applicant again disputed the debt in SOR allegation 1.j (\$920) after a resolution of his first dispute. The February 5, 2011 credit report indicates these accounts are closed. The May 15, 2012 credit report shows that Applicant disputed the debt in SOR allegation 1.b (\$69), which is a debt he stated he paid. The resolution of his disputes is unknown.<sup>8</sup>

Applicant has not participated in a financial counseling program. In 2010, Applicant met with an attorney to discuss filing bankruptcy. At the initial meeting, the attorney advised Applicant that he could file a Chapter 7 petition for bankruptcy. Applicant met with the attorney a second time. After a further review of his income, the attorney advised Applicant that he needed to file a Chapter 13 bankruptcy petition, not a Chapter 7 bankruptcy petition. Applicant retained the services of this attorney on May 31, 2012. He has paid \$85 to the attorney. As of the hearing, the Chapter 13 petition had not been filed because Applicant had to request a new copy of his social security card, which he did in October 2012. Before he could make this request, he needed a copy of his birth certificate, which he requested in August 2012. As soon as he receives his social security card, he plans on filing his Chapter 13 bankruptcy petition, which will include all the unpaid debts listed in the SOR. He anticipates a Chapter 13 monthly payment of approximately \$660. He also believes all his debts will be resolved through his bankruptcy.<sup>9</sup>

Applicant currently earns \$4,736 in monthly gross income, plus overtime of varying amounts. His June 2012 leave and earnings statement indicated he worked 42 hours of overtime that pay period, which increased his gross income for that pay period by \$1,865. Overtime work varies each week. His one biweekly net income in June 2012 was \$3,155. Because Applicant has not provided any other information about his income, I am unable to accurately determine his net monthly income and expenses. At the hearing, he indicated that he paid \$1,150 a month in rent and he had a vehicle payment of \$680 a month. Applicant completed a personal financial statement in June 2012, which showed monthly expenses of \$2,200 for rent, food, utilities, clothing, and car expense. His vehicle payment or car insurance is not part of this statement. For a family of five, he estimated food costs at \$300, which seems low. The financial

---

<sup>7</sup>GE 2; Tr. 31-33.

<sup>8</sup>GE 3 - GE 5; Tr. 31-32.

<sup>9</sup>GE 2; Tr. 25-31.

statement does not contain a full itemization of his monthly household expenses. The record lacks complete information about his monthly income and expenses. As of the close of the record, Applicant had not provided documentation indicating that he filed his bankruptcy petition.<sup>10</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.

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.

---

<sup>10</sup>GE 2; Tr. 22-23, 32-33, 48.

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 significant financial problems after he separated from the Air Force, accepted a position with insufficient income, then moved his family twice in one year. Most of the debts in the SOR 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;
- (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.

Applicant's debts arose after his discharge from the Air Force and acceptance of a job in another city. He incurred moving expenses, which he later realized he could not afford. His \$17.50 an hour salary was insufficient to allow him to meet all his monthly expenses. He rented his home when he moved, but the tenant remained only a short time. Applicant could not afford the payments on his house and his rent in his new locale. His wife's purse was stolen and the thief used Applicant's checkbook to write bad checks. He also incurred some debt from his divorce from his first wife. Applicant asserts he paid three small debts, but he has not provided proof. Circumstances beyond his control caused his financial problems. AG ¶ 20(b) is partially applicable because Applicant has not provided evidence that he has acted reasonably to resolve his undisputed debts.

Applicant has not received financial counseling nor is there clear evidence that his debts are under control. He pays his current expenses, which are under control. His past debts remain unresolved. He has not established a good-faith effort to contact his creditors and pay his debts. AG ¶¶ 20(c) and 20(d) are not applicable.

Applicant disputed four debts listed in the SOR because he does not owe the debts. His credit reports reflect his disputes of these debts. AG ¶ 20(e) applies to SOR allegations 1.b, 1.j, 1.m, and 1.o.

### **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.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant successfully performed his duties while in the Air Force, and he received numerous awards during his military service. He is highly respected by his supervisors for his skills and work ethic. Both consider him hard working, honest, reliable, and trustworthy. They do not believe his financial problems would impact his working with classified information. He accumulated debt due to circumstances largely beyond his control, including divorce, underemployment, and moving. When his finances were low, he and his family lived with his parents to reduce his monthly expenses. (See AG ¶ 2(a)(2).) He pays his current living expenses and lives within his monthly income. He disputed several debts, one which he believes he paid.



However, Applicant has not established a track record for paying his debts nor has he developed a plan of action for his debts. He plans on filing for Chapter 13 bankruptcy and estimates his monthly payment to be approximately \$660, but he has not provided proof that he has filed bankruptcy. In weighing all the evidence of record, I find that Applicant has not provided sufficient evidence to establish that his debts are under control. He needs additional time to show that he has filed for bankruptcy and is in compliance with his bankruptcy payment plan. 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. Given the amount of unresolved debts, Applicant's debts remain a security concern.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his finances under Guideline F.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p-1.w:	Against Applicant

### **Conclusion**

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

---

MARY E. HENRY  
Administrative Judge