



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



In the matter of:)	
)	
)	ISCR Case No. 11-10296
)	
Applicant for Security Clearance)	

Appearances

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

06/21/2013

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 June 9, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on October 5, 2012, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant received the SOR on October 18, 2012. He submitted a notarized, written response to the SOR allegations dated October 29, 2012, 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 25, 2013. Applicant received the FORM on April 25, 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 May 31, 2013. DOHA assigned this case to me on June 10, 2013. The Government submitted nine exhibits, which have been marked as Items 1-9 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 2, 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 and 1.b of the SOR. His admissions are incorporated herein as findings of fact. 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 59 years old, works as a manager for a DOD contractor. He has worked for his employer since 1978 and has held a security clearance since 1978. The record contains no evidence showing that Applicant has mishandled classified information or materials.¹

Applicant completed his college education in 1978 after receiving bachelor's and master's degrees. He and his wife married in 1980. They have two children, ages 25 and 20. His younger child attends college. His older child lives independently.²

In 2006, Applicant and his wife purchased land on which they built their home. They financed their home with a \$278,000 mortgage. Their initial mortgage payment, including property taxes, was approximately \$1,700 a month. The mortgage lender calculated their yearly property tax payment on the land only. When the mortgage lender recalculated their yearly property taxes to include the home in 2008, their monthly mortgage payment increased to \$2,793 in 2008. They paid the mortgage until they depleted their funds. They made their last mortgage payment in May 2009.³

¹Item 4.

²Item 5 - Testimonies.

³*Id.*; Item 6.

During the 2008-2009 time frame, Applicant fell behind in payments on his credit cards. He also incurred over \$4,000 in repairs to his 1995 truck from an automobile accident in December 2008,⁴ and his wife's income declined during the economic crisis. Applicant has not provided a statement of household monthly income and expenses showing the financial impact of the increase in his mortgage and decline in his wife's income.⁵

Applicant and his wife applied to their mortgage lender for a modification of their mortgage loan in 2009. They were advised not to pay their mortgage during the loan modification process. Applicant did not indicate from whom he received this information nor did he provide any written documentation to verify this statement. I take administrative notice of the generally known fact that loan modification is a mechanism to resolve mortgage loans where default is imminent as shown by missed monthly mortgage payments of short duration.⁶

On December 21, 2010, the mortgage lender wrote Applicant and his wife a letter, expressing the mortgage lender's regret about the delay in the process for approving Applicant's loan modification request. The letter indicated that their June 2009 loan payment was due and that the lender's records indicated that their loan entered into foreclosure on September 9, 2010. The letter also advised that although a trustee's sale had been set for February 1, 2011, the sale would be postponed to allow for his loan modification review request to be completed. By letter dated April 28, 2011, the mortgage lender advised Applicant that their request for modification of their mortgage loan had been approved. Under the terms of the modification, Applicant and his spouse were required to make three trial payments of \$2,717 a month beginning June 1, 2011. If they complied with the trial program, their loan modification would become permanent. The letter bears a handwritten notation, presumably from Applicant, which states that the prior monthly mortgage payment had been \$2,793. Essentially, the loan modification reduced Applicant's monthly payment by \$76. The record does not reflect that they participated in the trial program, but Applicant told the investigator during his July 2011 personal subject interview that, with the help of an attorney, he was in the process of restructuring his mortgage and that he was still making his payments. In his October 29, 2012 response, Applicant admits the \$268,835 mortgage debt. The January 28, 2013 credit report reflects that the mortgage lender foreclosed on his property, date unknown, and that there is a zero balance on this loan.⁷

Applicant filed a lawsuit against the mortgage lender in state courts. The basis for his state court action is unknown and the decision of the trial court is unknown. Applicant provided documentation, which reflected that an appeal had been filed with

⁴Due to the age of his truck, Applicant only carried liability insurance coverage on it. Item 5.

⁵Item 5; item 6.

⁶*Id.*

⁷*Id.*; Item 9.

the state appellate court, asking for review of the trial court decision. The decision of the appellate court is unknown. Applicant provided a letter dated May 31, 2013 from his attorney, indicating that Applicant and his wife have filed a lawsuit in federal court against his mortgage lender to prevent the unlawful foreclosure and dispossession of their home. The letter also advises that the parties are engaged in good-faith settlement discussions to resolve the dispute.⁸

The SOR identifies one additional debt of \$4,154 owed to a collection agency. Applicant's June 2011 credit report reflects a total debt of \$4,886 and a balance due of \$4,697. Applicant entered into a repayment plan with creditor and began paying \$75 a month in January 2011. As of November 2012, he owed \$4,100 on the debt. His January 2013 credit report showed a balance due of \$3,815.⁹

Prior to the issuance of the SOR, the Government mailed interrogatories to Applicant asking him to explain the status of several debts.¹⁰ Applicant submitted documentation showing that he resolved four debts, which are not listed on the SOR.¹¹

Applicant currently earns \$10,930 a month in gross income and receives \$6,889 a month in net pay. His wife receives \$3,470 a month in net pay for a total net household income of \$10,359. Their monthly expenses total \$6,961, including \$2,200 for rent. He lists ten debts on which he makes monthly payments. His monthly debt payments total \$433, including his monthly payment to the creditor in SOR allegation 1.a. He and his wife have a net monthly remainder of approximately \$2,965. There is no evidence that Applicant had financial counseling.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

⁸Item 5; item 6; AE A.

⁹Item 1; Item 2; Items 5-7; Item 9.

¹⁰Only the first two pages of the interrogatories and the attachments are included in item 6. These two pages identify three debts of concern to the Government. Based on Applicant's attachments, the Government inquired about more than three debts in these interrogatories.

¹¹Item 6.

¹²*Id.*

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.

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 when his mortgage payment increased nearly \$1,000 a month and his wife's monthly income reduced at the same time. He experienced difficulty paying his mortgage and credit card debts. He stopped paying his mortgage payments in June 2009, which led to foreclosure on his house. 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's financial problems began when his mortgage payment increased approximately \$1,000 a month because of a miscalculation in his property taxes. At the same time, his wife experienced an unknown amount of monthly income loss. Both events were beyond his control. Applicant and his wife sought a modification of his mortgage loan in an effort to reduce his monthly expenses and to pay his mortgage. Without evidence of their actual income and expenses in 2008, it is difficult to assess the extent of the financial hardship caused by the increase in the mortgage payment. This mitigating condition partially applies.

While Applicant has not had financial counseling, there are clear indications that his debts are resolved or being resolved, particularly his mortgage debt. The January 2013 credit reports shows that mortgage company foreclosed on his house and that the balance on Applicant's mortgage debt is zero. Thus, the largest SOR debt is resolved. AG ¶ 20(c) applies to SOR allegation 1.b.

Long before the SOR was issued, Applicant initiated good-faith efforts to reduce his indebtedness. He negotiated settlements and debt cancellation agreements on four non-SOR debts. He also negotiated a monthly repayment plan for the debt in SOR allegation 1.a. He has complied with the terms of his payment plan and has reduced the balance owed on that debt. Applicant and his spouse attempted to negotiate a loan modification on their mortgage. They declined to accept the terms of the approved loan modification because it did not substantially reduce their monthly payment. AG ¶ 20(d) applies.

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 currently earn a significant income. After they pay their monthly bills, they have almost \$3,000 a month in discretionary income. Applicant took responsibility for his unpaid debts and resolved four large debts with the agreement of the creditors. He complies with terms of his repayment plan for his last unpaid debt.

Concerning the mortgage debt, Applicant agreed that his mortgage debt was more than 180 days past due, that the balance was \$268,835, and that he was indebted to his mortgage lender. As of January 2013, the mortgage lender had reclaimed and sold his house through foreclosure, an action which resulted in a zero balance on his debt. Applicant recently filed a unlawful foreclosure and dispossession action against his mortgage lender. The disposition of Applicant’s security clearance eligibility does not turn on the disposition of his appeal. The January 2013 credit report shows that Applicant does not owe any money on the mortgage debt after the foreclosure sale. Should Applicant and his spouse prevail in their appeal, their present income is sufficient to cover mortgage payments.

Applicant has shown a track record for resolving credit card debt. He continues to fight the mortgage lender over the foreclosure of his home. He lives within his means, and he has sufficient income each month to pay all his bills and more. 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

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