



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



In the matter of:)	
)	
)	ISCR Case No. 11-11479
)	
Applicant for Security Clearance)	

Appearances

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

09/23/2013

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 March 30, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on December 12, 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, and he answered it on February 2, 2013. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on May 2, 2013, and I received the case assignment on May 16, 2013. DOHA issued a Notice of Hearing on July 5, 2013, and I convened the hearing as scheduled on July 23, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 6, which were received and admitted into evidence without objection. Applicant testified. He did not submit any exhibits. DOHA received the hearing transcript (Tr.) on August 1, 2013. I held the record open until August 23, 2013, for Applicant to submit additional matters. Applicant chose not to submit any documents. The record closed on August 23, 2013.

Procedural and Evidentiary Rulings

Notice

Applicant received the notice of the date, time, and place of the hearing 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 this right under the Directive. (Tr. 8-9.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.e, 1.g-1.p, 1.r-1.v, and 1.y of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.f, 1.q, 1.w, 1.x, and 1.z of the SOR.¹ 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 40 years old, works as an aircraft mechanic for a DOD contractor. He began his current employment in March 2011 after completing 18 months of schooling. Prior to this, Applicant worked in property management, in the building industry, in the newspaper industry, and in aviation as a pilot.²

¹When 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).

²GE 1; Tr. 16-18.

Applicant and his wife married in February 2011. He has a daughter, age 11 and a son, age 9, from a previous relationship. In May 2008, he learned from a woman renting a room from his children's mother that his children's mother was abusing the children. The next day he obtained a temporary restraining order and temporary full-time custody of his children. He now has full custody of his children, who live with him. They do visit their mother, but he is their primary caretaker.³

After obtaining custody of his children, Applicant had the children evaluated physically at the emergency room. He also paid for therapy for the children, who are doing very well now. He did not have medical insurance to pay these medical costs because he could not afford the monthly premiums. Thus, he incurred significant medical bills for his children's medical care.⁴

Between December 2006 and September 2008, Applicant was involved in a car accident. An uninsured motorist hit his vehicle from behind. Emergency personnel transported him to the emergency room for a neck injury. He did not have health insurance, and his car insurance did not pay his medical bills. During this same time frame, Applicant's neighbors assaulted him. The emergency personnel transported him to the emergency room for treatment of his significant injuries. He did not have health insurance, and the Victim's Compensation Fund did not pay his medical bills after the court dismissed the case.⁵

When he attended school from October 2008 until March 2011, Applicant worked part-time at several jobs, sometimes two part-time jobs at a time. In February 2011, he stopped working to study for his final tests and certification as an aircraft mechanic.⁶

Applicant earns \$3,936 in monthly gross income.⁷ He no longer earns overtime pay. With his loss of overtime, Applicant states that his monthly net pay is approximately \$2,122. His wife's net income is approximately \$3,827 a month. During the school year, Applicant receives child support from his children's mother, as she works as a school bus driver. Beginning in September 2013, he will receive \$529 a month child support, which is garnished from the children's mother's income. He is owed back child support. His total monthly net household income is approximately \$6,478.⁸

³GE 1; Tr. 15-16, 62.

⁴Tr. 16, 19.

⁵Response to SOR; Tr. 28-30.

⁶GE 1.

⁷He reported gross monthly income of approximately \$4,800, which included overtime pay. Because he did not provide a copy of his most recent 2013 earnings statement, his gross pay is calculated from his 2012 earnings statements attached to his answers to interrogatories. GE 2.

⁸GE 2; Tr. 45-47.

As outlined in his October 2012 personal financial statement, Applicant's monthly expenses include a \$1,950 mortgage payment, a \$674 car payment, a \$1,182 education loan payment for his wife, an \$861 payment on wife's credit card, \$560 for utilities, \$726 for gasoline and car insurance, \$250 for food, \$50 for clothing, \$100 for child care, and \$100 for miscellaneous items. His monthly expenses total \$6,956. Based on his personal financial statement, Applicant's monthly expenses exceed his income by \$478. At this time, Applicant is not paying his students loans as the loans are in deferment. His next payment of \$616 is due on December 15, 2013.⁹

The majority of the debts listed in the SOR relate to medical bills incurred for his injuries in the assault and car accident and for the treatment of his children. The medical debts identified in SOR ¶¶ 1.j (\$1,726), 1.k (\$246), 1.l (\$823), 1.m (\$823), 1.n (\$549), 1.o (\$99), and 1.p (\$2,445) are owed to a community hospital and total \$6,711. The medical debts identified in SOR ¶¶ 1.r (\$189), 1.s (\$568), 1.t (\$223) and 1.y (\$413) are owed to emergency room physicians in the same town and total \$1,393. The medical debts identified in SOR ¶¶ 1.u (\$616) and 1.v (\$2,749) relate to Applicant's car accident. The medical debt in 1.i (\$820) is owed to a city hospital, and 1.a (\$91) is a radiology bill. The creditors for the medical debts in SOR ¶¶ 1.b (\$707), 1.c (\$326), 1.d (\$39), and 1.e (\$81) are unidentified. Applicant denied the \$829 medical bill in SOR ¶ 1.q, stating that his children's mother is required to pay the bill, but he did not provide any documentation from the court or otherwise, which supports his statement. Applicant's unpaid medical bills total \$14,362. The evidence of record reflects that he has paid seven medical bills and partially paid two medical bills for total payments of \$1,319.¹⁰

The largest debt (¶ 1.h - \$7,730) is the balance owed on a vehicle repossession. Applicant denies owing a cable bill and provided documentation which shows that his cable bill is current. He also denies \$190 phone bill in SOR ¶ 1.w, indicating he paid the bill in 2004. This bill appears only on the May 6, 2011 credit report and is shown as closed. Finally, he testified that the \$754 bill in SOR ¶ 1.g is the same as the debt in SOR ¶ 1.x. The May 6, 2011 credit report shows that the debt in ¶ 1.x has a zero balance and is closed. He has one credit card with a small balance. He has not paid his bill. A number of the bills are old and no longer appear on his credit report. He filed a Chapter 7 bankruptcy in December 2002, and his debts were discharged in March 2003.¹¹

Applicant retained the services of a debt resolution company about two years ago. He has not provided a copy of his contract with this company. The company ceased working with him after less than a year because he did not have sufficient funds each month to comply with the terms of his contract. He believed the company paid several of his smaller bills. He has not provided any documentation which reflects

⁹GE 2; Tr. 48.

¹⁰GE 2 - GE 5.

¹¹*Id.*; GE 6; Tr. 32-34, 51, 55.

payments made by the company. He has not provided an updated budget nor has he provided a payment plan for his debts.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.

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.

¹²Tr. 56, 63.

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 he assumed full-time custody of his two children, and he sustained injuries from an assault and a vehicle accident. 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.

Applicant's financial problems occurred for reasons beyond his control. When he discovered that the mother of his children was abusing them, he obtained full parental custody of his two children in 2008. Because of the abuse, he acted responsibly when he had his children medically evaluated and then obtained counseling for them, even though he did not have medical insurance to cover the costs. Shortly after, he required medical care because of injuries he sustained in a motor vehicle accident and as a result of an assault by his neighbors. His lack of health insurance left him with full responsibility for the payment of these medical expenses. Applicant has paid approximately \$1,300 of his old medical bills, which total more than \$14,000. While he expresses an intent to pay these bills at some time, he does not have a definitive plan to repay these debts. His intent to resolve these bills in the future is insufficient to show that he has acted responsibly under the circumstances, as is required to fully mitigate the security concerns under the financial considerations guideline. AG ¶ 20(b) applies partially because circumstances beyond his control created his financial problems.

Applicant provided evidence which reflects that his cable bill with the original creditor listed in ¶ 1.e (\$513) is current. Applicant testified that he paid the phone bill identified in ¶ 1.w (\$190) in 2004, and the May 6, 2011 credit report shows that this account is closed. The May 6, 2011 credit report also reflects a zero balance for the \$943 debt listed in SOR ¶ 1.x. While Applicant has not received credit counseling, he is credited with the resolution of these debts under AG ¶ 20(c).

Applicant paid a few small medical bills in good faith. He has not paid most of his outstanding medical bills nor has he paid the debt listed in SOR ¶ 1.h (\$7,730). He has no payment plan to pay his debts, nor has he made any effort to resolve these debts. AG ¶ 20(d) is not applicable.

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's debts arose from circumstances beyond his control. He acted responsibly when he removed his children from an abusive home environment and made sure they received the proper medical care, both physically and mentally, during their transition. His ability to repay the medical bills from his children's care was hampered significantly when he was assaulted by his neighbors and injured in a car accident. Since this time, he has focused his attention on providing a stable domestic environment for his children.

Applicant is not required as a matter of law to resolve all the debts listed in the SOR; however, he must take some action towards the resolution of his debts. Applicant has not made progress toward the resolution of the medical bills arising from his children's care and his medical bills from his injuries. He does not have a plan to pay his debts nor has he shown a track record for the resolution of his debts. His current monthly household expenses exceed his monthly household income, making it unlikely that Applicant can resolve his past-due debts anytime in the near future or even take steps towards the resolution of his debts one at a time. Given his present finances, a security concern remains about his financial situation.

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
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.v:	Against Applicant
Subparagraphs 1.w-1.x:	For Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	For 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