



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



In the matter of:)	
)	
)	ISCR Case No. 11-12215
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

08/30/2013

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 April 4, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on November 30, 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 December 5, 2012, and he answered in January 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 8, 2013, and I received the case assignment on May 28, 2013. DOHA issued a Notice of Hearing on June 26, 2013, an Amended Notice of Hearing on July 3, 2013, and a second Amended Notice of Hearing on July 8, 2013. I convened the hearing as scheduled on July 11, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE N, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 19, 2013. I held the record open until August 1, 2013, for Applicant to submit additional matters. Applicant timely requested additional time to submit the supplemental evidence. He was given until August 19, 2013. Applicant timely submitted AE O - AE BB, which were received and admitted without objection. The record closed on August 19, 2013.

Procedural Ruling

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. 12.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.f - 1.j of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.b - 1.e 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 41 years old, worked as an avionics technician for Department of Defense contractors. After high school, Applicant attended several colleges and has earned credit towards a degree, but he has not completed college. He received two certifications, one as a computer technician and one as an aircraft technician. He

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).

believes he has sufficient educational credits for an associate's degree, but he has not received a degree.²

While he completed his avionics training, Applicant worked part time as a store clerk. In November 2007, Applicant began working as an avionics technician. In late 2008, the company began laying off workers and when it closed in February 2009, Applicant was out-of-work. Applicant was unemployed until June 2010. For the next three months, he performed similar work on a federal contract. The contract ended, and he remained unemployed until March 2011, when he began working for another federal contractor. With this company, he lived in another state while completing company required training. The company then assigned him to a work location which required his family to move about 350 miles. In October 2011, he began work with his current employer. In January 2012, he again moved to another state because of his work. This employer continues to sponsor him for his security clearance. However, the contractor laid him off in March 2013 until he resolved his security clearance issues.³

Applicant and his wife married in May 2008. They have a four-year-old son. He has three children, ages 19, 16, and 13, from a previous relationship. He also has four stepchildren, ages 28, 21, 17, and 16. The oldest stepchild does not live with him.⁴

When he and his wife married, Applicant's wife worked in the hotel industry as a sales catering manager. When they moved in 2011, his wife stopped working and was unable to find employment until July 2013. She did occasional babysitting, and he also worked occasionally as a airport shuttle driver. At the time of the hearing, his wife had accepted a job as the property manager for an apartment complex and would start her position the next week. Her salary is approximately \$54,000 a year. Because of her new position and the landlord's sale of his current residence, Applicant and his wife moved into an apartment in the complex where she works. The move reduced their monthly rent from \$1,460 to \$1,076 and their utility cost by \$300. Applicant estimates that his two interstate moves cost him about \$5,500. His tax returns indicated these costs were about \$1,700. His employers did not reimburse these costs.⁵

Applicant began receiving unemployment benefits in March 2013 after his company laid him off. In the spring, he returned to his family home in State A to help his brother start a business. If the business was successful, Applicant considered moving back to State A. The business is still developing and has not produced sufficient income

²GE 1; GE 2; Tr. 31-35.

³GE 1; GE 2; Tr. 35-39.

⁴GE 1; GE 2; Tr. 30-31.

⁵AE R; AE X; Tr. 38, 44-45, 84-86, 90, 117-118, 129-130.

to pay him a salary. With his wife's job, he plans to remain where he currently lives and look for employment.⁶

Applicant provided a copy of his federal income tax returns for the years 2010 through 2012. In 2010, his household income totaled \$93,202, including \$16,890 in unemployment benefits for him. He and his wife received a \$2,968 tax refund. In 2011, their household income totaled \$80,321, including \$8,294 from pensions and retirement distributions and \$1,300 in unemployment benefits. They owed \$846 in additional federal income taxes and \$455 in state income taxes. In 2012, their household income totaled \$66,476. The Internal Revenue Service applied their \$1,036 tax refund to their 2011 tax debt, leaving a balance owed of \$81. Taxes and penalties raised their state income tax debt to \$650.⁷

Applicant receives \$460 a week in gross unemployment benefits and \$400 a week in net unemployment benefits for a total monthly income of \$1,600. His benefit ends in September 2013. His wife's estimated gross monthly income is \$4,496 and her estimated net monthly income is \$3,300. His budget reflects total monthly expenses of approximately \$3,700, including a \$150 payment on his state tax debt and his \$428 child support payments. Applicant's wife does not receive child support. She is considering court action to obtain the payments from her children's father.⁸

Applicant fell behind in his bill payments when he was unemployed from February 2009 until June 2010, October 2010 until March 2011, and since March 2013. For the last two years, his wife has not worked regularly, which added to their financial problems.⁹ The family income has declined every year since 2011 as shown by their federal tax returns and his recent unemployment. Their unpaid debts listed in the SOR are discussed as follows.

The \$482 medical bill in SOR ¶ 1.a relates to medical treatment Applicant received. The medical provider also seeks payment for medical services rendered to his stepchildren. Applicant believes that their father should pay the bill, which has led to a dispute between the medical provider and Applicant. The provider will only accept a payment from him if he agrees to pay his stepchildren's bill. He continues to work with the provider on this issue.¹⁰

Applicant denies the \$4,949 credit card debt in SOR ¶ 1.b. This debt relates to the timeshare debt in SOR ¶ 1.j. Applicant and his wife purchased a timeshare in 2008

⁶Tr. 39-40, 43-44, 94-95.

⁷AE Q; AE T; AE Z; Tr. 124-125.

⁸AE Q; AE X; Tr. 44-45.

⁹GE 1; GE 2; Tr. 35-40, 43, 53.

¹⁰Tr. 112-113.

for \$19,199. Since Applicant and his wife did not have money for a down payment, the timeshare company opened a credit card account with the creditor in SOR ¶ 1.b and charged the \$1,920 down payment to the account. Applicant did not use this card for other purchases. The timeshare also assessed Applicant \$52 in monthly fees. Applicant paid the monthly timeshare payment of \$280 for six months, then stopped the payments when he realized his job was ending. He also paid on the credit card until late 2008. The creditor in SOR ¶ 1.b filed a court action to collect this debt. Applicant appeared in court twice, but the attorney for the creditor failed to appear on both occasions. The court dismissed the case in the fall of 2012 when the attorney failed to appear the second time. Applicant did not provide a copy of the court record. New court action has not been filed, and Applicant could not pay the \$200 a month payment requested by the creditor to resolve the debt. The timeshare is not collecting its debt. Applicant believes the company sold his timeshare, but the records provided by the company do not reflect Applicant's belief. The timeshare is no longer awarding him timeshare travel points. These debts remain unpaid.¹¹

SOR allegations 1.f through 1.i concern four education loans and total \$13,588. Applicant's education loans are currently in deferment and not in default. His loan payments are scheduled to resume in September or October 2013. He periodically pays the interest on a small federal school loan.¹²

Applicant provided documentation showing that he paid the \$695 debt in SOR ¶ 1.e as of April 2013 after completing periodic payments. He also provided documentation, which indicates that he paid another past due debt in October 2012. This debt is not listed in the SOR, but was discussed with the investigator during Applicant's personal subject interview.¹³

Applicant negotiated a payment plan with the creditor for the more than \$3,300 credit card debt identified in SOR ¶ 1.d. On August 16, 2012, before the SOR was issued, he made his first \$50.83 payment. He continued to pay this amount twice monthly until he was laid off. He now pays \$10 a month in an effort to maintain the agreed upon payment plan. When his income improves, he intends to return to paying the full agreed upon amount. His current balance on this debt is approximately \$2,600.¹⁴

Applicant now pays child support for two children as well as arrearage. Applicant arranged to have his child support payments deducted from his pay and amended this request in July 2012. His payments are sent to State A, where his children live. Part of his \$377 monthly payment is applied to his arrearage. Following his lay-off, Applicant

¹¹AE L; AE W; Tr. 48-51, 66-70.

¹²GE 3 - GE 5; AE K; AE O; AE P; AE S; AE AA; AE BB;. Tr. 104-112. Given his current unemployed status, it is likely any request by Applicant for additional deferments will be granted.

¹³GE 2; GE 3; AE J; AE M; AE U; Tr. 65.

¹⁴GE 3; Response to SOR; AE C; AE I; AE V; Tr. 62-64.

stopped his child support payments. With his wife's return to work, he has included payment of his monthly child support obligation in their household budget. In September 2012, one credit reporting agency deleted the listed child support debt from State B following a challenge from Applicant. Under the law of State B, Applicant notified the proper agency about his child support obligations in State A. The paperwork showing his payments to State A was not forwarded in a timely manner to State B, which created an improper debt with State B. The debt for State B is not listed in the SOR.¹⁵

Applicant submitted three letters of recommendation from coworkers. Two of the three individuals are aware of his financial problems. These individuals highly recommend Applicant for a security clearance. They praise his work skills and ethic. They describe him as honest and reliable.¹⁶

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.

¹⁵GE 2 - GE 5; AE E - AE H; AE X; AE Y; Tr. 52-60, 87, 115.

¹⁶AE A; AE B; AE N.

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 first developed significant financial problems when the company where he worked closed in February 2009 and he did not work for 15 months. He also did not work for five months in 2010 and early 2011 and again in 2013. Most of his 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:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(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 debts are recent and on going, thus AG ¶ 20(a) is not applicable. Applicant disputed the validity of the child support with State B because State B was attempting to collect money already paid to State A. He successfully disputed this debt, which is not listed in the SOR. AG ¶ 20(e) applies to the debt with State B.

Since February 2009, Applicant has experienced significant periods of unemployment. Over the last four and one-half years, Applicant has been unemployed for 26 months and is currently unemployed. When he works, he pays his child support and arrearage through a voluntary garnishment of his pay. He has paid two debts and worked out a payment plan for a third debt. He is currently making a minimum payment to the creditor in SOR allegation 1.d because he wants to keep the payment plan in place. He plans to resume full monthly payments when he returns to work. He has acted reasonably under the circumstances in which he finds himself. AG ¶ 20(b) is applicable.

Applicant negotiated a payment plan with the creditor in SOR allegation 1.d and complied with the terms of the payment plan until his recent job lay off. He continues to make a small payment to this creditor. He negotiated a payment plan, which resulted in the payment of the debt in SOR allegation 1.e. He did the same for another debt not listed in the SOR. AG ¶ 20(d) applies to SOR allegations 1.d and 1.e.

Applicant's student loans are in deferment and thus, under control. He has not received financial counseling. His monthly expenses are being paid and he has not incurred any new debts. AG ¶ 20(c) is partially 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.

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. Except for the timeshare, Applicant's debts are not the result of extravagant spending. Rather, his debts occurred because of long periods of unemployment. When he purchased the timeshare, he had income to pay the monthly costs, but within a short time, his income levels changed. Since 2010, his household income has declined because either he or his wife or both have not worked. When he works, he makes payments towards the resolution of his old debts, and he pays his child support, including the arrearage he owes.

His wife recently obtained full-time employment with an apartment rental company. As a result, the family moved to less expensive housing, which reduces their basic monthly expenses. With her steady income, the family will be able to pay its normal monthly living expenses, and he can apply part of his unemployment benefits to his child support. Their budget includes payment of his child support, past-due state taxes, and small payments on several debts, including one SOR debt. Applicant has paid one debt at a time, and he has a plan to do the same upon his return to work. Despite his unemployment, Applicant continued to pay his rent, his car payment, and other living expenses without incurring additional unpaid debts. Applicant has established a track record for paying one old debt at a time. His primary problem is that he has been unemployed for nearly one-half of the time since February 2009, making it difficult to pay his bills. He and his wife are working to pay their debts and living expenses, and they have made lifestyle changes, which reduced their living expenses.

Applicant's student loans are currently deferred and not overdue. With his wife's income and his income when he works, he has the ability to pay his school loans. The timeshare debt is significant, but again, can be resolved if he is working. His sporadic employment over the last four and one-half years has made it difficult for him to quickly resolve his debts. Two incomes in his household will make it easier for him and his wife to pay off their debts.

Applicant's employer has recognized him for his dedication, integrity and trustworthiness. He received specialized training and has a record of commendable and reliable work performance. He is married and is supporting five children. He has focused his attention on providing a stable domestic environment for his family. Most significantly, he has taken affirmative action to pay or resolve, one at a time, his

delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) His 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. While some debts remain unpaid, they are insufficient to raise security concerns as Applicant has shown that he is acting responsibly towards his debts under difficult circumstances. (See AG ¶ 2(a)(1).) In considering all the evidence of record and Applicant's testimony, I find that the weight of the evidence clearly weighs in favor of granting him a security clearance.

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
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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