



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



In the matter of:)
)
) ISCR Case No. 11-13492
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

10/02/2012

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, 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 July 5, 2011. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on May 16, 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 and submitted a notarized, written response to the SOR allegations dated June 22, 2012. He 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 July 16, 2012. Applicant received the FORM on July 25, 2012. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on September 24, 2012. The Government submitted six exhibits, which have been marked as Items 3-6 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.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.c, 1.d, and 1.g of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a, 1.b, 1.e, and 1.f of the SOR.¹ He also provided an explanation of his answer to support his request for eligibility for a security clearance. Department Counsel amended the SOR after receiving Applicant's response to the SOR. Based on documentation submitted by Applicant, Department Counsel added the following SOR allegations;

1.h. You failed to file . . . state tax returns for tax years 2006 and 2009.

1.i. You failed to file a federal tax return for tax year 2006.

Applicant did not respond to the amendment. His silence is treated as a denial of these allegations. 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 cable puller for a Department of Defense contractor. He began his current position In March 2011. Applicant previously worked seven months full time after a two-month layoff and eight months working part time in the retail industry following a move to a new state. Applicant worked in ministry as an assistant pastor, music and arts, automobile repair, sales, food service, customer

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).

service, and other positions, many of which were part-time jobs. He also experienced six short periods of unemployment between 2004 and 2010.²

Applicant and his wife married in 2005. They have two children, ages 6 years and 23 months. Applicant's e-QIP indicates that he was homeless in 2004 and later lived with his wife's family. Applicant attended bible college for five years, but he has not received a degree.³

Applicant earns \$2,472 a month in gross income, and he receives \$2,034 a month in net income from his current job. On his personal financial statement attached to his answers to interrogatories, Applicant indicated that he had recently obtained a part-time job, which pays \$7,000 a year. He did not know his monthly gross or net income as he had not been paid.⁴ I find that Applicant's part-time job would increase his net monthly income by approximately \$425 a month. His current monthly expenses total \$2,045. With his part-time job, he has sufficient income to pay his monthly expenses and some of his debts.⁵

The SOR identified two small medical debts totaling \$525, one school debt totaling over \$9,311, and a judgment for \$5,350 based on a July 26, 2011 credit report. The SOR also identified unpaid tax debts of \$3,300, which Applicant acknowledged in his interview with the Office of Personnel Management (OPM) investigator on September 1, 2011. In this same interview, Applicant admitted owing over \$51,000 in education loans to the U.S. Department of Education, although a April 26, 2012 credit report reflects a balance of \$39,000 on this debt. Applicant listed several small unpaid debts on his personal financial statement, which are not listed on the credit reports in the record or in the SOR. The credit reports reflect that Applicant has paid several collection debts not listed in the SOR.⁶

In his response to the interrogatories, Applicant admitted that his state tax returns for the years 2006 and 2009 were missing. He attached copies of his federal tax returns for 2010 and 2008 as provided to him by the Internal Revenue Service. The status of his 2009 tax return is not shown in his IRS information; however, Applicant admitted to the OPM investigator that he owed \$3,000 in taxes for that year. The IRS documentation indicated that tax return transcripts are available for the current year and the three prior processing years. For earlier years, account transcripts are available and may provide

²Item 3; Item 5,

³Item 3.

⁴By dividing \$7,000 by 12 (months), Applicant's monthly gross income would be approximately \$563. His net monthly income is estimated at \$425.

⁵Item 5.

⁶Item 1; Item 4 - Item 6.

the necessary information. The IRS had no record that Applicant filed a tax return for the tax year 2006.⁷

In his response to the SOR, Applicant denied owing any federal taxes for 2009 and any state taxes for 2007. He stated that he had paid these debts, but he did not provide any documentation showing that these debts are satisfied. He also indicated that he paid the two medical bills identified in SOR allegations 1.a (\$288) and 1.b (\$237), but he did not provide a copy of a cancelled check or statement from the creditor showing that these debts are resolved. He also indicated that he had established a payment plan for his school loan debts and that he is in compliance with his payment plan. He again did not provide any documentation which shows the terms of his payment plan or his monthly payments under the plan. Finally, Applicant stated that he contacted the creditor about paying the judgment, but that he could not afford the monthly payment. He did not provide documentation, which reflects his contacts with this creditor, its offered payment plan, and his rejection of this offer.⁸

In his answers to interrogatories, Applicant indicated that he and his wife recently sought help from a financial specialist to help work out a method to resolve his debts. He has not provided any information about this person or a copy of an agreement with this individual.⁹

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

⁷Item 5.

⁸Item 2.

⁹Item 5.

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;
- (c) a history of not meeting financial obligations; and

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

Applicant developed significant financial problems due to part-time employment, low income, and unemployment. He also incurred significant educational loans. He has been unable to resolve his debts. Disqualifying conditions AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(g) is also established because the IRS has no record of Applicant having filed a federal income tax return for tax year 2006. However, concerning the amended allegation that he did not file his state tax returns in 2006 and 2009, the Government did not establish its case because a statement that these tax returns are missing is insufficient to show he did not file the returns. Applicant could have filed the returns and the state could have lost or misplaced his returns. Additional information from the state about the status of his tax returns for the years 2006 and 2009 is needed to prove this allegation. SOR allegation 1.h is found in favor of Applicant.

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:¹⁰

(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

¹⁰ 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.

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 debts occurred over several years and as recently as 2010. His debts are continuing and he has not shown that his "missing" federal tax return for tax year 2006 has been filed. Thus, AG ¶ 20(a) is not applicable. The record lacks clear evidence that Applicant received credit or financial counseling or that his debts are resolved. While Applicant experienced short periods of unemployment which impacted his ability to pay some of his bills, he has not provided documentation which shows he has paid his debts, negotiated a repayment plan in good faith, acted reasonably under the circumstances, or otherwise resolved his debts. The above mitigating conditions in AG ¶¶ 20(b) - 20(d) are 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 reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems have been ongoing for nearly eight years, due in part to unemployment and low-paying jobs, which prevented him from paying all his bills. He has paid some past-due debts, but he continued to incur more unpaid debts. Applicant avers that he had paid his 2009 federal tax debt and his 2007 state tax debt as well as several small debts. He stated that he is in compliance with a payment plan he arranged for his educational loans and that he tried to negotiate a settlement for the judgment. Applicant has not provided any documentation from the creditors showing his debts are resolved or copies of cancelled checks or bank statements which reflect the payments he states he has made. Applicant needs more time to show he has control over his debts and debt payment.

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 and failure to timely file his federal income tax return for tax year 2006 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.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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