



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



In the matter of:)	
)	
)	ISCR Case No. 11-14499
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

04/30/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, 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 September 5, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on November 20, 2014, 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 Trustworthiness determination 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. He submitted a notarized, written response to the SOR allegations dated December 30, 2014, and 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 March 30, 2015. Applicant received the FORM on April 3, 2015. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a timely response. DOHA assigned this case to me on April 27, 2015. The Government submitted three exhibits, which have been marked as Items 1-3 and admitted into the record. The SOR and Applicant's response to 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 - 1.k of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegation in ¶ 1.l 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, works as a systems administrator for a DOD contractor. He began his current employment in March 2012. Appellant previously worked for federal contractors as a technical support engineer from August 2006 until September 2011 and as a system administrator from June 2003 until August 2006. The record lacks any evidence of disciplinary problems at work. Applicant served in the United States Navy on active duty and in the active reserve from 1993 until 2000, when he received an honorable discharge.²

Applicant graduated from high school in 1992, and he received an associate's degree in technology in December 2005. Applicant and his wife married in November 1998. They have two children, ages 14 and 9.³

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).

²Item 2.

³Item 2.

In September 2011, Applicant's work with a federal contractor ended at the conclusion of the contract. Around the same time, his wife lost her job when her employer downsized. Applicant was unemployed for six months, and his wife was unemployed for more than one year.⁴

The loss of employment by Applicant and his wife created serious financial problems for them. They became delinquent in their bills as well as their federal and state taxes for the 2011 tax year. Upon his return to work, Applicant began to correct his problematic financial situation in a systematic manner. They resolved their tax debts by March 2013. Upon the advice of their financial advisor, they prioritized the debts to be resolved. After their taxes, they gave top priority to their past-due mortgage debt and past-due education loan payments.⁵

SOR allegation 1.a concerns Applicant's past-due mortgage payments. Applicant and his wife prepared and filed the necessary paperwork for a home loan modification. Their mortgage lender notified them on March 3, 2015 that they had successfully modified their mortgage loan. Through this process, Applicant reduced his monthly mortgage payment from approximately \$1,700 a month to \$960 a month based on a statement of his account information sheet dated March 16, 2015. This document reflects that Applicant made his first monthly payment on March 6, 2015.⁶

Applicant's second largest SOR debt (§ 1.j \$20,257) relates to education loans. The creditor granted him forbearance on this debt, which expired shortly after he returned to work in 2012. In the summer of 2014, Applicant contacted the creditor for his education loans and made arrangements to rehabilitate the loans. He complied with the terms to rehabilitate his loans, as indicated in a December 31, 2014 letter from the new creditor. His current monthly payments are approximately \$127. He is current on these payments. The March 2015 credit report reflects that the debt to the creditor identified in the SOR is a paid collection, and the account has a zero balance.⁷

In his response to the SOR, Applicant indicated that he had contacted the creditor in allegation 1.b (\$2,328) and arranged a payment plan. He did not articulate the specifics of the plan, and he did not provide any documentation showing that he had made payments under the plan.⁸

The March 2015 credit report shows that Applicant paid three state liens totaling \$5,900 and that the state released the liens between October 2013 and May 2014. The

⁴Item 1, Response to SOR; AE A.

⁵Item 2; AE A.

⁶Item 1; Item 3; AE A.

⁷Item 1 - Response o SOR; Item 3; AE A.

⁸Item 1.

credit report reflects that the medical debts in SOR allegations 1.g (\$110) and 1.h (\$110) are paid. The same credit report shows two \$34 debts with the same account number (SOR allegation 1.e). One debt is paid, and one debt is unpaid. Based on the account number in SOR allegation 1.k, the credit report indicates that the actual amount of the debt is \$34 and that it is paid. The \$182 debt in SOR allegations 1.c and 1.f are the same based on the account number. The \$35 and \$95 medical debts listed in SOR allegations 1.d and 1.i are not shown on this credit report, but Applicant admitted owing these debts, which are not paid.⁹

Applicant denied the \$384 apartment judgment identified in SOR allegation 1.l, stating that he never lived in this apartment complex. This debt is not listed on the March 2015 credit report, the only credit report in the record. Applicant's e-QIP reflects that he has owned his present home since January 2008 and that he previously owned a home from September 2003 until January 2008. In his answer, Applicant advised that he was working with a credit service to have this debt removed from his credit report.¹⁰

Applicant has not provided a budget or a copy of the monthly earnings statement for him and his wife. The March 2015 credit report lists six medical bills and notes that four are paid. The credit report also shows 16 other credit entries, with only two past-due. One past-due debt is his mortgage, which is now current, and the other past-due debt is the \$2,328 debt in SOR allegation 1.b. Based on a review of all the information in the record and the SOR, Applicant's unpaid medical bills total \$346. The record indicates that Applicant met with a financial advisor at some time. It is unknown if this individual provided budgeting advice.¹¹

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.

⁹Item 3.

¹⁰Item 1 - Item 3.

¹¹Item 3.

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 sensitive [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 in 2011 and 2012 when he was unable to pay all his bills. Most of the debts had not been resolved as of the time of the issuance of the SOR. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 20(a) through ¶¶ 20(f), and the following are potentially applicable:

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial problems arose when he and his wife simultaneously lost their jobs, factors beyond his control. He was unemployed for about six months, and she was unemployed for more than one year. This loss of income severely impacted their finances. Once he returned to work, Applicant began the slow process of paying his past-due debts and rebuilding his finances. He applied to modify his mortgage loan and he resolved his tax issues. He did not ignore his debts. He acted responsibly under the circumstances. AG ¶¶ 20(b) applies.

Applicant acted in good faith when he contacted the creditor holding his education loans and developed a payment plan to rehabilitate the loans, which he successfully did. He also paid several small medical bills. Given the record evidence of debt resolution and rehabilitation, his statement that he is paying the \$2,328 debt identified in allegation 1.b is credible. Applicant received guidance from his financial advisor on a method to repay his debts. The March 2015 credit report, the education loan rehabilitation, and the modification of his mortgage loan reflect that his finances are under control. He has mitigated security concerns under AG ¶¶ 20(c) and 20(d).

Finally, Applicant had a legitimate reason to dispute the judgment listed in allegation 1.I as not his because he lived in residential homes owned by him for at least nine years before the entry of the judgment in 2012. Since the judgment is not listed on

the March 2015 credit report, it is inferred that he successfully disputed this debt. AG ¶ 20(e) applies to SOR allegation 1.I only.

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 developed significant financial problems when he and his wife lost their jobs in 2011. He returned to work after six months of unemployment, and she returned to work after more than a year of unemployment. The loss of income for this long period of time seriously impacted their ability to pay their usual and customary living expenses. Once he returned to work, Applicant began the slow process of repaying his past-due debts while paying his normal monthly living expenses. He paid his tax debt within a year of returning to work. He successfully rehabilitated his education loans and obtained a modification of his mortgage loan. His remaining debts totaled less than \$3,000 and are paid or being paid. Applicant did not ignore his debts nor did he incur large, unpaid credit card debts while unemployed. He managed to keep his unpaid debts within reason and when he was able, he took action to pay them. Applicant is not an individual who spends money needlessly or excessively. Rather, except for unemployment, he managed his income and expenses. He has taken control of his unpaid debts and is in a better financial situation than he was a few years ago. The issue in financial cases is not simply whether all an applicant’s debts are paid; it is whether an applicant’s financial circumstances raise concerns about his fitness to hold a security clearance. While a few small debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).) The evidence reflects the ongoing efforts by Applicant to regain control over his finances and to pay his past-due debts. He prioritized his debts, and he developed a plan of action to pay his debts. He has an established track record of debt payment. His past financial problems are not a security concern.

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

Subparagraphs 1.a-1.l: 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 a security clearance is granted.

MARY E. HENRY
Administrative Judge