



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



In the matter of:)
)
) ISCR Case No. 11-14675
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: Alexander M. Falconi, Personal Representative

09/27/2013

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 August 3, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on March 29, 2013, 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 on April 8, 2013, and he answered it on April 30, 2013. He requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on July 22, 2013, and I received the case assignment on July 25, 2013. DOHA issued a Notice of Hearing on August 7, 2013, and I convened the hearing as scheduled on August 29, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant and his wife testified. He submitted exhibits (AE) marked as AE A through AE J, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 9, 2013. I held the record open for Applicant to submit additional matters. Applicant timely submitted AE K - AE U, which were received and admitted without objection. The record closed on September 20, 2013.

Procedural Ruling

Motion

At the hearing, Department Counsel made an oral Motion to Strike SOR allegation 1.f because the debt had been resolved in 2007. Applicant, through his representative, did not object. The motion was granted. SOR allegation 1.f is stricken from the record. (Tr. 9-10)

Findings of Fact

In his Answer to the SOR, Applicant denied all the factual allegations in ¶¶ 1.a-1.k 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 32 years old, works as a network engineer for a DOD contractor. He began his current employment almost four years ago. His supervisor, who is also a friend through church, describes him as hardworking and honest. He further opines that Applicant acts with integrity and honor and has high morals. A long-time family friend also wrote that Applicant showed a strong work ethic, a sense of

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).

responsibility, great leadership skills, dependability, and honesty. Neither individual indicated an awareness of his financial problems.²

Applicant and his wife married in August 2003. They have two daughters, ages 8 and 3, and a son, age 7. One year ago, at the suggestion of his parents, Applicant and his wife decided to move into his parents' home for financial reasons and to help with the care of Applicant's grandmother.³

Applicant currently attends college part time, working towards a bachelor's degree. He expects to graduate in February 2014. At the present time, his student loans are in deferment. Because of work-related travel and a heavy workload, Applicant did not attend school from August 2012 until August 2013. From October 2012 until August 2013, he made the \$180 monthly payments on his student loans, which he had consolidated.⁴

Applicant currently earns \$5,944 a month in gross income and receives \$4,059 a month in net income. His wife does not work. Since he started living with his parents, he does not pay rent.⁵ Because his parents live in a more rural area and he had two old vehicles which did not operate well on the road to his parents home, he purchased a newer vehicle one year ago. After the hearing, Applicant and his wife refinanced their car loan, which reduced the monthly payment from \$475 to \$380.⁶ Applicant's other monthly expenses include \$525 for groceries, \$350 for utilities, \$155 for cell phone, \$95 for television, \$100 for daughter's medical (dental) bill, \$50 for internet, \$500 for gasoline, \$412 for church tithing, \$94 for car insurance, \$150 on credit card debts, \$100 into savings for debt payments, \$230 on miscellaneous items, and \$255 towards old debt, for total monthly expenses of approximately \$3,500. He has a remainder of \$500 for periodic or unanticipated expenses such as car maintenance or repairs and for his student loans as the payments will resume once he graduates from college.⁷

The SOR identified 11 purportedly continuing delinquencies as reflected by credit reports from 2011 and 2013, totaling approximately \$49,742. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a

²GE 1; AE I.

³GE 1; Tr. 28-29, 79-80.

⁴AE B - AE D; Tr. 27-28, 79-81.

⁵Applicant previously paid \$1,350 a month in rent, but did not have a car payment. Tr. 29.

⁶Applicant was paying \$600 a month on his car loan with a goal to pay the loan earlier than required. AE H; Tr. 78.

⁷AE K; AE R; AE T; AE U.

different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

The Government acknowledged that the \$1,370 debt alleged in SOR ¶ 1.f had been paid in 2007. This debt is resolved, and at the Government's request, it has been stricken from the record. The \$23,186 debt alleged in SOR ¶ 1.c and the \$10,267 debt alleged in SOR ¶ 1.d are for two vehicle repossessions. Applicant and his wife bought two cars when they were young. They could not afford the car payments, and the cars were repossessed. His wife contacted the creditor for both debts. The creditor for the smaller debt advised that their total debt is now \$9,836 and that it would be willing to work out a payment plan. Applicant and his wife plan to start payment in March or April 2014. Applicant's wife also spoke with the collection agent for the largest SOR debt. This company indicated that it would accept \$100 a month payment for six months before it would discuss payoff options. Applicant cannot begin these payments until the middle of 2014.⁸

SOR ¶¶ 1.a, 1.b, and 1.e are the same debt.⁹ The three credit reports dated August 25, 2011, January 25, 2013 and July 10, 2013 show that the \$2,000 debt in SOR ¶ 1.a had been sold or transferred and that the original creditor, as listed in SOR ¶ 1.a, listed the account as closed with a zero balance. Applicant's August 7, 2013 credit report reflected this same information, and in addition, it showed that this account was sold to the collection agency identified in SOR ¶ 1.e (\$4,087) who changed the account number. The collection agency identified in SOR ¶ 1.e is no longer in business. The August 7, 2013 credit report indicated that the collection agency in SOR ¶ 1.b (\$4,150) purchased this debt. The account number in SOR ¶ 1.b is the same as the account number SOR ¶ 1.a.¹⁰ The August 7, 2013 credit report and the August 7, 2013 settlement offer show the name of the original creditor as the name identified in SOR ¶ 1.e. Applicant and the collection agency in SOR ¶ 1.b have agreed to settle this debt for \$1,250. Applicant began paying \$250 a month in August 2013 with a final payment due in December 2013. He also resolved one small debt not listed in the SOR.¹¹

The debts in SOR ¶¶ 1.i (\$725) and 1.k (\$938) are also held by the collection agency identified in SOR ¶ 1.b. Applicant agreed to a three-month payment of \$316 beginning in January 2014 to resolve these debts. Applicant also contacted the creditor for the medical debts identified in SOR ¶¶ 1.g (\$564) and 1.h (\$147). The creditor

⁸SOR; AE L; AE M; AE Q; Tr. 9-10, 62-65.

⁹Applicant and his wife testified that SOR ¶¶ 1.b and 1.e were the same debt. Confusion about these two debts and SOR § 1.a persisted throughout the hearing. Applicant's hearing documentation and his post-hearing documentation clarified these debts. AE F; AE N; AE O.

¹⁰The credit reports dated January 25, 2013 and July 10, 2013 reflect that Applicant disputed this debts. GE 4; GE 5.

¹¹GE 3- GE 5; AE A; AE E; AE F; AE L; AE N - AE P.

agreed to a \$50 a month payment beginning in 2014. Finally, the collection agency for the debt in SOR ¶ 1.j (\$2,317) advised Applicant that it was deleting the debt from the credit reports. The collection agency provided no reason for its decision. With this decision, Applicant cannot pay the collection agency. The debt is not listed on the January 25, 2103, the July 10, 2013, or the August 7, 2013 credit reports under the name of the original creditor or the collection agency. The current owner and status of this debt is unknown, making it impossible to pay.¹²

Applicant provided a copy of his federal and state tax returns for the years 2008 through 2012. His tax returns show the following gross income: \$82,288 in 2008, \$70,796 in 2009, \$59,979 in 2010, \$62,999 in 2011, and \$67,282 in 2012. The tax returns also reflect that for the years 2011 and 2012, Applicant received a tax refund of more than \$3,800 each year. Applicant has not explained how this money was used. He also received a \$1,000 bonus in August 2013. His net bonus payment was \$673. Although he has not explained how he spent this money, testimony reflected that his oldest daughter required dental work which cost \$1,700. This expense is now being paid at the rate of \$100 a month and is expected to be paid in full by the summer of 2014. It is likely the bonus money was applied to this expense.¹³

Applicant explained that his debts arose because he and his wife made inappropriate and uneducated financial decisions when they were younger, poorly planned their finances, and did not have sufficient income. Eventually they became overwhelmed by their debts. They took one financial counseling session and followed the counselor's advice to cut spending. They also worked on reducing their spending habits in the six months before the hearing.¹⁴

Applicant and his wife have developed a payment plan to resolve their old debts, while continuing to pay their regular monthly expenses. Under their plan, they will pay \$250 a month to resolve the debts in SOR ¶¶ 1.a, 1.b, and 1.e by December 2013. In January 2014, they begin payments of \$316 a month to resolve the debts in SOR ¶¶ 1.i and 1.k. By spring 2014, they plan to begin payments on the debt in SOR ¶ 1.d and by summer, they expect to begin payments on the debts in ¶¶ 1.g and 1.h. They are saving \$100 a month towards their debts.¹⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying

¹²GE 3; GE 4; AE A; AE G; AE L.

¹³AE R; AE S; Tr. 92.

¹⁴Tr. 84, 92.

¹⁵AE R; AE U; Tr. 109.

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.

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 from poor financial decision-making and inappropriate spending habits. 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:

- (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 consolidated his school loans and began payments in October 2012. His school loans are current and in deferment while he attends school. With the help of his wife, he began to contact creditors about the resolution of his debts. He settled one small debt and developed a payment plan for one debt. He and his wife moved to his parents home, which eliminated a monthly rent payment, but required the purchase of a newer car, creating a monthly car payment. He and his wife took the advice of a financial counselor and cut their spending. He has sufficient income each month to meet his monthly expenses and to pay towards his debts. These mitigating conditions are applicable. Even if the security concerns are not resolved by the mitigating conditions, security concerns are resolved under the whole-person analysis.

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's financial problems began when he and his wife were young and made poor financial decisions. (See AG ¶ 2(a)(4).) His 2008 tax return reflected a good income, which was inappropriately used. His income declined over the next two years by more than \$20,000. Since 2011, his income has slowly increased, but is still about \$14,000 a year lower than his earnings in 2008. His debts reflect poor choices about how to spend household income, including unnecessary spending. He received several tax refunds in excess of \$3,800, but it does not appear that this money was used to resolve his debts. His budget reflects that he has sufficient income to make a \$50 monthly payment on his medical debts.

Applicant has taken positive steps to address his finances. He and his family moved into his parents home to reduce rental costs. He has contacted creditors in an effort to determine which debts he owes and to work out a resolution of his debts. His efforts resulted in the resolution of three debts totaling \$8,404, a current payment plan for a fourth debt (\$4,150), and future payment plans for four small debts totaling \$2,374 and one larger debt (\$10,267) once the current debt payment is concluded. He also saves \$100 a month to resolve debts. One SOR debt was paid in 2007. He has developed a plan to repay his debts, one at a time. His plan does not negatively impact his ability to pay his current obligations nor does it deprive his family of necessities, such as food and medical care. He paid his school debts as required and recently renegotiated his car loan to reduce his monthly payment and increase his income available for debt payment. He is focused on resolving his debts, but it will take time. He is married and has three children. As a result, he has focused his attention on providing a stable domestic environment for his family. Most significantly, he has taken affirmative action towards the resolution of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) 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 do not raise security concerns. (See AG ¶ 2(a)(1).) Applicant's efforts over the last year to take control of his finances and his old debts reflects positively on him and overcome his poor financial decision-making in the past. Applicant has taken sufficient steps towards the resolution of his debts to mitigate the security concerns raised about his finances.

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.e	For Applicant
Subparagraph 1.f:	Stricken from the SOR
Subparagraphs 1.g-1.k:	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