



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



In the matter of:)	
)	
)	ISCR Case No. 12-00275
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

07/17/2014

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 October 17, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on February 6, 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 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 February 24, 2014. He submitted a notarized, written response to the SOR allegations dated March 1, 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 April 18, 2014. Applicant received the FORM, and he had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response dated June 5, 2014. DOHA assigned this case to me on July 15, 2014. The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and 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.d and 1.j of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.e -1.i of the SOR.¹ Applicant stated that he did not recognize the debt in SOR allegation ¶ 1.f, which is treated as a denial. 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 old, works as a help desk administrator for a DOD contractor. He began his current employment in July 2011. As required by his job, he works overseas in a dangerous area. Applicant served in the National Guard as a reservist for more than 10 years. He received an honorable discharge in March 2011. While in the National Guard, Applicant served in Iraq between February 2003 until February 2004. Upon returning from his deployment, Applicant was unable to find employment for eight months. He worked steadily from October 2004 until April 2010, when he voluntarily left his job for religious and family reasons. He remained unemployed until July 2011, a total of 15 months.²

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²Item 5.

Applicant attended college, but did not graduate. He is single. He has two sons, ages 11 and 6. His sons do not live with him; however, he is obligated to pay child support for each child. He pays \$469 a month for his oldest son and \$369 a month for his younger son. When he met with the Office of Personnel Management (OPM) security clearance investigator in November 2011, Applicant acknowledged that he was behind in his child support payments. The October 2011 credit report indicated that he owed \$7,796 and \$6,892 in child support for each of his sons. The April 2013 credit report showed that Applicant had paid his child support arrearage and is now current on his child support payments.³

Applicant provided a personal financial statement with his answers to the April 2013 interrogatories. His net monthly income totals \$7,650, and his monthly expenses total \$2,867, including \$838 in monthly child support payments. He has a monthly remainder of \$4,783 available to pay his debts.⁴

Applicant denied any knowledge of the \$1,042 debt in SOR allegation 1.f and admitted the \$1,110 education loan debt in SOR allegation 1.e. The April 2013 credit report reflects that the creditor for the 1.f \$1,042 education debt submitted a claim with the government for payment of this loan and that the high credit for the 1.e debt was \$1,042 with a new balance due to the Department of Education of \$1,110. I find that the two debts are the same.⁵

SOR allegations 1.a (\$2,253), 1.b (\$143), and 1.c (\$600) related to debts owed to the Department of Veterans Affairs (VA) for education loans. Applicant contacted the VA and made arrangements to pay these debts. For each loan, he agreed to pay \$190, \$25, and \$50 a month respectively, until the loans are paid. He provided documentation showing that he made his first payments on June 4, 2014. The smallest debt will be paid by October 2014, and the remaining two debts will be paid by June 2015.⁶

The October 2011 credit report reflects that Applicant disputed the account information for the debt in SOR allegation 1.j (\$8,595). He contacted the creditor, and the creditor agreed that he owed \$5,214. He arranged to repay his debt at the rate of approximately \$652 a month for eight months. He made his first payment on May 23, 2014, and he will continue to make a payment on the 23rd of each until the debt is paid in full at the end of January 2015. He did not provide any documentation showing his payment or the agreement.⁷

³Item 1; Items 6-8.

⁴Item 6.

⁵Item 6; Item 8.

⁶Item 5; Item 7; Item 8; AE A.

⁷Item 5; Item 7; AE A.

Applicant contacted the creditor for the \$9,359 education debt in the summer of 2013. Because the loan is in default, the creditor required him to participate in a voluntary repayment program for 10 months beginning May 29, 2014. At the end of this program, his application for loan rehabilitation will be considered. Applicant made the first two payments at the end of May 2014, as required. He did not provide proof of payment, but he has provided a copy of the agreement and voluntary payment plan.⁸

Concerning, the remaining four debts, Applicant indicated in his answers to interrogatories that he had paid these debts. The debts in SOR allegations 1.g (\$1,733), 1.h (\$732) and 1.i (\$337) are listed on the October 2011 credit report. None of these debts are listed on the April 2013 credit report. Applicant indicated that he also paid the \$1,110 education loan debt, but the credit report does not show his payment, and he did not provide documentary proof.⁹

Applicant submitted a letter dated June 3, 2014 from his point of contact at his work station. This individual, a first lieutenant in the U.S. Army, verified that Applicant made the necessary arrangements to pay his debts and that he is working diligently to pay the outstanding balances on his debts. The lieutenant also described Applicant as a hard worker and a valued member of his team, who is a “paragon of knowledge and customer service” and a dedicated worker.¹⁰

Applicant submitted a letter of recommendation from a major, a lieutenant colonel, and a brigadier general, each praising his work skills and dedication to his job and the mission. He also provided three letters complimenting his work and skills on a particular project.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

⁸AE A.

⁹Items 6-8.

¹⁰AE A.

¹¹AE A.

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 during periods of unemployment. At the time the SOR was issued, he had not resolved many of his debts. These two disqualifying conditions apply.

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

- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's last voluntary period of unemployment created significant financial difficulties for him. After he returned to work full-time in July 2011, he focused his debt repayment efforts on his substantial child support arrearage, which he fully resolved by April 2013. He also resolved several smaller debts. More recently, he has contacted his remaining creditors and developed payment plans for these debts. His actions reflect a good-faith effort by him to repay his debts. Although he has not received financial counseling, his debts are under control. AG ¶¶ 20(b) and 20(c) are partially applicable, and 20(d) is fully 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 d Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching ea 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 began taking responsibility for his debts after he began his current employment. He reasonably chose to pay his child support arrearage first. He is now current on this obligation. Although he did not provide documentation showing payment, his statement that he has paid several smaller debts is accepted as it is supported by the 2013 credit report, the lieutenant's letter, and his showing of payments to the VA. These efforts establish a meaningful track record of debt payment.

Even though he is working thousands of miles from home, he diligently pursued his creditors and made arrangements to pay his remaining debts through a reasonable and credible payment plan. His command confirmed that he has made these contacts and that he is working towards a resolution of his debts. He has sufficient income to pay the agreed upon payments, to resolve his outstanding debts quickly, and to pay his customary living expenses. While he did not pay all his overdue debts by the time the SOR was issued, he has not ignored his debts. He has taken affirmative action to pay or resolve most 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 are insufficient to raise security concerns. (See AG ¶ 2(a)(1).) His superiors praise his work skills and performance, which supports granting him a security clearance. The letters of recommendation are not a major determining factor in this decision.

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