



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



In the matter of:)	
)	
)	ISCR Case No. 12-01311
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esq. Department Counsel
For Applicant: Alan V. Edmunds, Esq.

12/09/2013

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 October 6, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on June 20, 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 June 28, 2013, and he answered it on July 9, 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 August 19, 2013, and I received the case assignment on August 27, 2013. DOHA issued a Notice of Hearing on September 16, 2013 for a hearing scheduled on October 8, 2013. Due to the Government shutdown, the hearing was cancelled. A second Notice of Hearing was issued on October 30, 2013, and I convened the hearing as scheduled on November 19, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE O, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 27, 2013. I held the record open until December 2, 2013, for Applicant to submit additional matters. Applicant timely submitted AE P, which was received and admitted without objection. The record closed on December 2, 2013.

Findings of Fact

The SOR alleges six debts, totaling \$14,277 and a bankruptcy discharge in 2000. (SOR ¶¶ 1.a through 1.g) In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. 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 60 years old, works as a supervisor for a contractor for the Transportation Safety Administration (TSA). He began working for his employer in 2002 as a checkpoint screener and later became a lead checkpoint screener. He previously worked in the medical profession and as a intranet administrator. Applicant received an associate's degree in 1980.¹

Applicant's long-term partner died in January 2010. Applicant assumed responsibility for some of his partner's debts upon his death as well as the cost of their rental property. In his personal subject interview in December 2011, Applicant discussed 10 debts, three of which belonged to his deceased partner. He had user authority on his partner's accounts, but he denied using the accounts. Applicant acknowledged to the investigator that seven debts were his. He admitted that many of the debts had been past due. He then advised that he had closed the seven accounts and paid the balances. The October 2011 credit report supports his statement concerning the seven accounts discussed with the investigator. None of the seven debts are listed on the SOR. Of the three debts belonging to his deceased partner, the two largest debts are listed on the October 1, 2013 credit report as past due, but are not listed in the SOR. Applicant paid the large dental bill listed on his e-QIP.²

¹GE 1; AE A; AE D; Tr. 16-17, 29.

²GE 2, GE 4; GE 5; Tr. 32-33, 51.

Applicant's primary hobby is photography. In 2011, he entered a photography contest some distance from his home. He did not win the contest. From this event participation, he understood that if he wanted to win, he needed to submit a much more elaborate presentation. When he entered the same photography contest in 2012, he spent at least five thousand dollars on his photographic presentation, believing he would win a substantial cash prize. He used his credit cards to pay for his materials for the presentation. He did not win, and his efforts created financial problems for him. He no longer participates in large-scale competitions and is limiting his photographic hobby presentation to note cards and other smaller items.³

After his participation in the photograph contest, Applicant realized that his finances were out of control. He contacted his employee assistance program (EAP) for help. His EAP office referred him to a credit counseling and debt resolution company. He first contacted this company on April 24, 2013, and he scheduled a telephone conference for April 30, 2013. In addition, he either met with or talked by telephone with a counselor from this company on May 2, 2013, May 7, 2013, May 15, 2013, and May 28, 2013. Through these meetings, Applicant began to work on a payment plan with some of his creditors.⁴

While working with the credit counseling company, Applicant decided to meet with a bankruptcy attorney and did so on May 20, 2013. After meeting with the bankruptcy attorney and upon the attorney's advice, Applicant decided to proceed with filing a Chapter 7 bankruptcy petition, his second Chapter 7 bankruptcy,⁵ and retained legal counsel. He also followed the attorney's advice and stopped making payments on all of his accounts.⁶

Applicant paid the required retainer fee to his bankruptcy attorney by August 2013, then worked with his attorney to identify his debts. After completing this process, Applicant, through his attorney, filed his Chapter 7 bankruptcy petition on November 1, 2013. The court scheduled a meeting of his creditors on November 27, 2013. His bankruptcy case is proceeding through the court, but is not yet resolved. As required by the bankruptcy court, Applicant took an online credit counseling program on June 3, 2013. He found this program "very helpful" with budgeting and managing his finances. Applicant continues to work with a money coach from the credit counseling company.⁷

Applicant submitted a full copy of his Chapter 7 bankruptcy petition, including the schedules listing his debts. The debts identified in SOR ¶¶ 1.b through 1.g are listed in

³Tr. 20-22, 30-31.

⁴GE 2; AE L; Tr. 34-36, 41, 45.

⁵Applicant's debts were discharged under Chapter 7 in 2000.

⁶AE E; AE M; Tr. 23, 36-37, 45-46.

⁷AE C; AE E; Tr.20, 22-23, 37-38, 43-44.

Applicant's bankruptcy petition, schedule F. Most debts are noted with a date of last activity in 2012 or 2013. Applicant pays his monthly expenses, and he no longer uses credit cards. He only uses his debt card. At the hearing, he indicated that he was current with his taxes, but his bankruptcy petition shows approximately \$1,500 in back taxes for 2010 on Schedule E. The Chief U.S. Attorney, tax division, is listed in Schedule F for notification purposes only. This listing is not explained. None of the credit reports show a tax lien has been filed by the Internal Revenue Service for these taxes.⁸

With the help of his money coach, Applicant prepared a personal financial statement on September 30, 2013. His listed gross income as \$5,557 a month and his net monthly income as \$4,421. His monthly expenses include \$2,200 for rent, \$300 for groceries, \$600 for utilities, \$500 for car expenses, \$100 for medical expenses, and \$100 for miscellaneous items, leaving a \$621 a month for unexpected expenses. He owns two old cars. He does not owe any debts on these cars. He has sufficient income to meet all his monthly expenses.⁹

Applicant submitted a personal financial statement with his answers to interrogatories in May 2013. This statement reflected \$137 a month more in gross income and \$82 a month more in net income. At the hearing, Applicant acknowledged that his income has decreased slightly. His May 2013 personal financial statement also listed his total monthly expenses at \$3,000, leaving \$1,500 a month to pay his debts. In the May 2013 statement, Applicant listed his monthly food costs at \$100, his utilities at \$300, and his car expense at \$200. These expenses are much lower than his September statement. I find the September statement more representative of his expenses. At the hearing, he did indicate that his utility costs had decreased, but that his medical expenses are now \$160, which is closer to the estimate on his May 2013 personal financial statement. He also stated that he continued to reduce his expenses, and he gave as two examples: 1) he now has only one cable box, not four, which reduced his cable expense, and 2) he turns his heat thermostat down when he is away from home during the day.¹⁰

As part of his bankruptcy petition, Applicant submitted an income and expense statement. His gross monthly income is listed as \$6,215 and his net monthly income is listed at \$5,283. His expenses are more detailed and include \$2,200 for rent, \$75 for electric, \$125 for water, \$25 for garbage pickup, \$250 for cable, \$100 for internet, \$200 for phone, \$550 for food, \$100 for car insurance, \$200 for home and auto repairs, \$500 for car expense, \$200 for laundry, dry cleaning, and clothing, \$250 for medical expenses, \$100 to charity, and \$335 for personal and entertainment, resulting in a negative remainder each month. For purposes of this decision, the personal financial

⁸AE P; Tr. 24, 41.

⁹AE K; Tr. 24, 43.

¹⁰GE 2; Tr. 46-47.

statement prepared in May and September 2013 reflect his current income and expenses.¹¹

Applicant submitted nine letters of recommendation from co-workers, one letter from a shift manager of another company, and four letters of recommendation given by previous employers in the past. All view Applicant as a highly competent worker and shift supervisor. Applicant has been supportive of several co-workers in their career development, and he inspires his co-workers. He provides emergency assistance to the public, when needed, using his prior medical training. His co-workers view him as honest and hard working. They trust him. His employer is aware of the reasons for the SOR. His performance evaluations reflect an above average performance.¹²

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.

¹¹AE P.

¹²AE A; AE F; AE I; Tr. 23-24.

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 following his expenditures to participate in a photography contest. He spent beyond his means when he incurred these debts. 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.

As required by the bankruptcy court, Applicant took a financial counseling course in June 2013 prior to filing his bankruptcy. He also met with counselors at a credit counseling company and has a financial coach, who is working him on a realistic and manageable budget. He has filed a Chapter 7 bankruptcy petition, which includes his SOR debts, which are unsecured, nonpriority debts that will be discharged under Chapter 7 of the Bankruptcy Code, and a small amount of taxes owed. His unpaid SOR debts will be resolved through bankruptcy early next year. His tax debt is not dischargeable in bankruptcy, but given that this debt has not appeared on his credit reports, I draw an inference that he was resolving this debt until he filed his bankruptcy petition. He pays his current bills and has developed a rational and manageable budget.¹³ AG ¶ 20(c) applies.

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.

¹³There is some duplication of debts in Applicant's bankruptcy schedules. In a bankruptcy filing, most debtors list potential creditors, even when the debt may have been resold or transferred to a different collection agent or creditor, to ensure notice, and reduce the risk of subsequent dismissal of the bankruptcy. If Applicant failed to list some debts on his bankruptcy schedule, this failure to list some debts does not affect their discharge. Absent fraud, in a no-asset bankruptcy, all unsecured, nonpriority debts are discharged when the bankruptcy court grants a discharge, even when they are not listed on a bankruptcy schedule. *See Judd v. Wolfe*, 78 F.3d 110, 114 (3d Cir. 1996); *Francis v. Nat'l Revenue Service, Inc.*, 426 B.R. 398 (Bankr. S.D. FL 2010), *but see First Circuit Bucks Majority on Discharge of Unlisted Debt in No-Asset Case*, American Bankruptcy Institute, 28-9 ABIJ 58 (Nov. 2009). There is no requirement to re-open the bankruptcy to discharge the debt. *Collier on Bankruptcy*, Matthey Bender & Company, Inc., 2010, Chapter 4-523, ¶ 523(a)(3)(A). Not all debts are discharged through bankruptcy. Priority debts, such as tax debts, student loan debts, and child support obligations, are generally not discharged through bankruptcy. Secured debts such as home mortgages and car liens are not discharged unless the security (home or car) is foreclosed or repossessed.

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. The record clearly supports Applicant's statements that he paid past-due debts in 2010. His action indicates a track record for paying debts. He continued to manage his money for another two years, when he decided to spend a significant amount of money to compete in a photography contest. This decision increased his financial pressures, and eventually resulted in his

inability to pay all his debts. When he realized that he could not manage his debts, he sought assistance from his employer's EAP office. This office referred him to a credit counseling and debt resolution company. In late April 2013, several months before the issuance of the SOR, he began meeting with a company counselor. He then met with a bankruptcy attorney and accepted the attorney's recommendation that he file for a Chapter 7 bankruptcy, which would eliminate all his debts, except the unexplained tax debt. By his actions, Applicant has taken control of his debts and sought a reasonable solution to manage his debts and to decrease his monthly expenses. He has a plan, and he has sufficient income each month to pay his ordinary and necessary living expenses and to pay for reasonable unexpected expenses. With the aid of the credit counseling courses and his money coach, he is learning how to reduce his monthly living expenses and live within his income. His one small tax debt 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. In assessing all the evidence of record and noting the high regard in which he is held at work, his financial problems are insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

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

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