



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



In the matter of:)	
)	
)	ISCR Case No. 12-01406
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: Paula W. Phinney, Esquire

02/11/2013

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 April 29, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on June 25, 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 on June 30, 2012, and he answered it on July 18, 2012. Applicant retained counsel and requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on October 9, 2012, and I received the case assignment on October 22, 2012. DOHA issued a Notice of Hearing on November 23, 2012, and I convened the hearing as scheduled on December 17, 2012. The Government offered exhibits (GE) marked as GE 1 through GE 7, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE CC, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on January 3, 2013. I held the record open until January 7, 2013, for Applicant to submit additional matters. Applicant timely submitted AE DD - AE SS, which were received and admitted without objection. The record closed on January 7, 2013.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.c and 1.e of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegation in ¶ 1.d 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 58 years old, seeks employment with a DOD contractor in aviation maintenance. Applicant worked for this contractor for one year beginning in December 2010. Prior to this employment Applicant worked as a truck driver from February 2002 until July 2010. Applicant left his last job with a trucking company after the company laid off drivers and reduced his income by 50%. Eventually, his income declined to zero, in part, because Applicant refused to drive trucks with unsafe equipment. Applicant was unemployed from July 2010 until December 2010. Applicant has been unemployed since December 2011 when his DOD contractor job ended. He regularly looks for employment and has been offered two jobs that require a security clearance. He has been unable to accept these jobs.²

Applicant is not married and does not have any children. He graduated from college with a degree in aeronautical management in 1976 after completing numerous

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).

²GE 1; Tr. 28-29, 37-38, 59-60, 62-63, 66, 69, 96.

aeronautical training programs. He enlisted in the United States Marines in February 1978 and received an honorable discharge in February 1982. He received two good conduct medals, a Marine Corps expeditionary medal, and several ribbons. While in the Marine Corps, Applicant received extensive training in avionics. After his Marine Corps service, Applicant worked in the aviation field for many years. During this time, Applicant trained to be a pilot and received his commercial pilot's license in 1989. Because of the variable employment opportunities in aviation over the years, Applicant started working in the trucking industry around 2000.³

Applicant receives \$1,720 in unemployment benefits each month. Applicant provided several budgets. Because there were some differences in the monthly expenses and the remainder, Applicant prepared and submitted a new budget after the hearing. This budget details his monthly expenses, which total \$1,614. His budget includes \$100 a month payment on his active credit cards and \$150 in debt payment. He has \$106 remaining each month. Applicant provided copies of his tax returns for 2010 and 2011. His 2010 tax return reflected that he earned \$3,200 in salary and received \$13,881 in unemployment benefits. His 2011 tax return showed income of \$34,000.⁴

Around July 2006, Applicant purchased a house, which needed repairs and improvements to the roof and the addition of running water. He installed a roof and new siding. He also improved the road access to the house and installed a system for running water in the house. Much of his debt is the result of these repairs. Applicant listed his house for sale for \$100,000 in May 2009 at the recommendation of his bank after his request for a loan modification had been denied. His house has not sold, and it is still listed for sale. Applicant wants to use the proceeds of the sale to resolve his remaining debts, as he does not owe any money on his house.⁵

In May 2012, Applicant hired a debt resolution company to help him resolve his debts. This company helped him establish three debt payment plans based on full employment, but since he did not obtain a job, he could not comply with the terms of the payment plans. He submitted a copy of these debt repayment plans with his answer to the SOR. He met with a second credit counseling company, which reviewed his debts, and set up an exorbitant repayment plan. Applicant did not proceed with this company. In November 2012, Applicant met with a third credit counseling company, and with their help, he established a budget, which did not include payment of his credit cards or debts. Applicant did not retain the services of this company.⁶

³GE 1; AE W; AE Y; AE BB; AE NN; Tr. 56.

⁴GE 3; AE S; AE U; AE V; AE EE; AE FF; AE PP; Tr. 69.

⁵AE GG-AE KK; Tr. 39-41, 46-47, 51, 76-80.

⁶Response to SOR; GE 3; AE T; AE U; AE OO; Tr. 47-50, 89.

In 2007, Applicant began medical treatment for rheumatoid arthritis. He later received medical treatment for sleep apnea and a staph infection. Because he did not have health insurance, he paid for his treatment with cash or by credit card. Between October 2007 and January 2010, he incurred medical bills totaling \$2,870. Of this amount, he paid approximately \$1,217 in cash. He paid his medical bills over his other debts.⁷

Applicant submitted nine letters of recommendation from co-workers, former supervisors, friends, and neighbors. All praise his work ethic and work skills. They consider him honest and trustworthy, and recommend him for a security clearance. He submitted copies of his pilot training certificates and aviation maintenance training certificates.⁸

SOR Debts

In January 2007, Applicant obtained a secured loan, with his house as collateral, from Bank 1 for approximately \$65,000. Under the terms of the loan, Applicant would make monthly payments on the loan for five years. In 2012, he would make a balloon payment for the remaining balance. Applicant made his monthly payments on the loan until February 2009, when he began to experience difficulties maintaining the payments. Bank 1 eventually filed a lawsuit against Applicant to recover the money owed. With the assistance of legal counsel, Applicant settled the lawsuit in 2011. Under the terms of the settlement, Applicant paid Bank 1 \$20,000 in October 2011, \$500 a month for the next six months, and \$20,000 in April 2012. Applicant complied with the terms of agreement. Applicant saved his money when he worked in 2011, which allowed him to meet the initial terms of the agreement. He sold his all-terrain vehicle, guns, household furnishings, and cashed in an insurance policy, then used this money to make the final payment required by the settlement agreement. He has resolved the \$19,822 debt, which was originally \$59,822, identified in SOR ¶ 1.d. Bank 1 released any claim to his house, which is currently worth about \$158,000. As previously noted, Applicant listed his house for sale in 2009 for \$100,000. He has been unable to sell the house and continues to list it for sale.⁹

Applicant obtained a line of credit and a credit card from Bank 2. In addition to his house loan, he used both to help pay for a new roof, for siding, to pave the access road, and to install a water system for his house and to pay his living expenses when he was unemployed. He currently owes approximately \$20,627 on the line of credit (SOR ¶ 1.b) and approximately \$13,000 on the credit card (¶ 1.e). Applicant negotiated a settlement agreement with the collection creditor for Bank 2 on the credit card debt in July 2012, based on obtaining work. He was unable to comply with the terms of the agreement. He

⁷AE DD; Tr. 30-31.

⁸AE A-AE G; AE M; AE N; AE W; AE X.

⁹GE 3; AE H-AE J; AE Q; AE GG-AE KK; Tr. 31-33, 81-82.

renegotiated the terms of the agreement with the collection creditor for Bank 2. The creditor agreed to a \$5,000 settlement of this debt, to be paid at \$50 a month. Applicant made his first payment in late November 2012 and his second payment in late December 2012. Applicant has been unable to negotiate a reasonable repayment agreement with Bank 2 on the line of credit.¹⁰

Applicant negotiated a payment plan in July 2012 with the collection creditor for the \$6,787 debt in SOR ¶ 1.a, based his belief he would be working. The plan required a large payment at the end of September 2012. Because he was not working, Applicant could not make the payment. The collection creditor agreed to a \$50 payment in November 2012, a \$100 payment in December 2012, and beginning in late January 2013, a \$200 a month until the debt was paid. Applicant made his November and December payment on this debt.¹¹

Applicant negotiated a \$1,500 settlement with the collection creditor holding his remaining SOR debt of \$5,660 (SOR ¶ 1.c). He paid this amount to the creditor in September 2012. This debt is resolved.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.

¹⁰Response to SOR; GE 4-GE 7; AE O; AE P; AE SS; Tr. 39-44, 72-73, 82-86.

¹¹Response to SOR; GE 3-GE 7; AE R; AE Z; AE LL; Tr. 36-37, 42-43, 117-118.

¹²GE 3-GE 7; AE K; AE CC; AE MM; Tr. 34-35, 86-88.

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.

Appellant developed significant financial problems when his income from truck driving declined in 2009, and he voluntarily left his trucking job in July 2010 because of

equipment safety issues. Applicant fell behind in his bill payments. His bills remained unpaid for a long time. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns.¹³ 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 financial problems began when his income as a truck driver started to decline, and he developed medical problems, which required lengthy treatment. He did not have health insurance to pay for his medical expenses. These are circumstances beyond his control. When he realized that he could not pay his loan secured by his property, he contacted Bank 1 about modifying the loan terms, but Bank 1 rejected his request. Bank 1 recommended that he sell his house. In 2009, based on this recommendation, Applicant listed his for sale for \$100,000 at a price significantly less than its market value of \$158,000. He intended to use the proceeds from the sale of the

¹³In 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.

house to pay his debts. His house has not sold, although it continues to be listed for sale. Applicant has paid two SOR debts and is paying on two more debts. He has acted reasonably under the circumstances. AG ¶ 20(b) applies.

Applicant met with three debt resolution companies. Through the first company, he negotiated a payment plan for the debts in SOR allegations 1.a, 1.c, and 1.e. The payment plans were based on his obtaining full employment, which he has not obtained. Thus, he could not meet the high terms of these payment plans. He did not retain either of the two additional debt resolution companies he contacted, but one company helped him develop a budget. Through his own “good faith” efforts, Applicant negotiated a payment plan for these three debts. He paid the \$5,660 debt in SOR allegation 1.c, and he is paying monthly on the debts in SOR allegation 1.a (\$6,787) and 1.e (\$10,000). He has been unable to negotiate a reasonable payment plan for the debt in SOR allegation 1.b (\$20,627). Applicant’s regular monthly bills are paid. AG ¶¶ 20(c) and 20(d) apply.

Concerning the loan on his property, Bank 1 filed a lawsuit against Applicant to obtain the property or repayment of the \$59,000 debt owed on the loan. Applicant negotiated a settlement with Bank 1 in 2011. Between October 2011 and May 1, 2012, Applicant paid Bank 1 \$43,000 to settle the debt and retain title to his property. Applicant sold most of his personal items and cashed in an insurance policy as well as saved his earnings to pay the agreed upon settlement monies. He has resolved the debt in SOR allegation 1.d. AG ¶ 20(c) applies to this debt. Applicant has mitigated the concerns about his finances.

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.

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 problems first began when his income declined as his work duties decreased. His health issues added additional financial pressures because he did not have medical insurance to pay his bills, which are circumstances largely beyond his control. (See AG ¶ 2(a)(2)) As early as 2009, Applicant took steps to rectify his financial problems by placing his house for sale at a price he thought would sell the house quickly. His house has yet to sell. Applicant sought the assistance of several debt resolution companies, without effective results. He did develop a budget, which helps him track his income and expenses. On his own, he negotiated the settlement of three debts. Because Bank 2 is not cooperating, he has been unable to reach a payment plan with the only unresolved SOR debt. He fully resolved the loan on his house. Between October, 2011 and the hearing in December 2012, Applicant paid approximately \$45,000 to resolve his debts, using all his available resources to do so. He is compliant with his two existing payment plans. Applicant has done all he can do under his present circumstances to resolve or pay his debts. See ISCR Case No. 08-06567 (App. Bd. 2009); ISCR Case No. 09-08533 (App. Bd. 2010) 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 as Applicant has taken reasonable steps to resolve his debts, and under his present circumstances, he is doing all that he can. (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

Subparagraphs 1.a-1.e:

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