



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



In the matter of:)	
)	
)	ISCR Case No. 12-02052
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

07/11/2014

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 May 13, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 24, 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 October 14, 2013, and he answered it on October 28, 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 May 9, 2014, and I received the case assignment on May 15, 2014. DOHA issued a Notice of Hearing on June 2, 2014, and I convened the hearing as scheduled on June 12, 2014. The Government requested that a letter of rights and obligations dated February 25, 2014 and mailed to Applicant, be received as hearing exhibit (HE) 1. Applicant did not object, and HE 1 was received in the record. In its case-in-chief, the Government offered exhibits (GE) marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A-1 through AE A-18, which were received and admitted into evidence without objection. The record closed on June 12, 2014. DOHA received the hearing transcript (Tr.) on June 26, 2014.

Procedural and Evidentiary Rulings

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 9)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b of the SOR with explanation. 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 51 years old, works as a senior software engineer for a Department of Defense contractor. He began his current position in November 2008. He started working for his employer in March 1997 as a contractor. He became a permanent employee in November 2008. When he became a permanent employee, his salary declined by \$40,000 in 2009 and \$20,000 in 2010. His most recent performance evaluation describes him as a “very capable engineer” and a hard worker, who is driven to complete his tasks on time. He mentors junior employees and works well with other disciplines. He effectively manages his work load. His department manager indicates that Applicant is a dedicated employee whose work ethic and quality of work is consistently excellent. In addition, Applicant’s adherence to security procedures has been impeccable. He has held a security clearance for many years.¹

¹AE A-4; AE A-16; AE A-E; Tr. 64, 66-67. During his personal subject interview in 2011, Applicant stated that he received a written warning for a security violation in 1999 or 2000 because he inadvertently copied an unclassified file from a classified computer to an unclassified disc. He received training as a result. GE 2.

Applicant was born in Peru and emigrated to the United States in 1978. He became a naturalized U.S. citizen in 1986. He received a bachelor's degree and a master's degree in software engineering and has worked as a software engineer since 1988. He and his wife married in 1991. They are currently legally separated. They have an 18-year-old son and a 13-year-old daughter. His children live with their mother in the marital home. Applicant lives nearby, and he pays \$2,600 a month in spousal support. His wife operates a successful business.²

Applicant currently earns approximately \$170,000 a year. His gross monthly employment income is approximately \$13,086.³ Applicant's two submitted leave and earnings statements for 2014 reflect that he worked an additional 25 hours each pay period, and he earned an additional \$4,089 during this time. His leave and earnings statements show monthly pre-tax deductions totaling \$1,214, tax deductions of \$3,634, after-tax deductions including two loans totaling \$809, leaving a net income of approximately \$11,500. Applicant also receives rental income from properties owned by him. Applicant earlier provided a copy of his leave and earnings statements for July 2013, which indicated slightly higher gross income because of overtime worked. His overtime hours vary each month, and this impacts his monthly income. Applicant also submitted a copy of his 2012 federal and state income returns, which showed a total income of approximately \$175,000 and tax refunds of approximately \$23,500.⁴

Applicant and his wife purchased a house in 1997. They built a larger, more expensive home in 2005 and rented their first home. Applicant began purchasing homes as an investment around 2004 or 2005. He eventually purchased five more homes, which he rented. At the time of the economic downturn and with increasing monthly mortgage payments, Applicant began experiencing problems paying his mortgages because of a loss in salary and rental income. He sold one property through a short sale. On a second property, he applied for a loan modification, which the mortgagor denied. He attempted to sell this property through a short sale, but the mortgage company declined to approve the sale. As a result, the mortgagor foreclosed on this property. Applicant has no resulting debt on these properties.⁵

In 2008 or 2009, Applicant began experiencing difficulty paying the mortgage on the family home. He negotiated a loan modification, which reduced his monthly payment by \$500. He made these payments for several years. By 2011, he again experienced problems with paying the mortgage. He sought a second home loan modification and retained the services of a real estate agent to sell his home. The real estate agent

²GE 1; GE 2; Tr. 61-64, 70.

³Applicant's leave and earnings statements reflect that he is paid every two weeks, which equals 26 paychecks a year. Two months each year he receives three paychecks. His monthly income is calculated on two paychecks a month. AE A-15.

⁴GE 2; AE A-5; AE A-7; AE A-8; AE A-15.

⁵GE 2; GE 4; GE 5; Tr. 28-29, 76, 79, 81.

obtained several short-sale offers on the property. At the same time, the mortgagors were proceeding towards foreclosure on the property. Despite submission of purchase offers, the mortgage lenders never approved the short sale offers. To stop the foreclosure of the family home, Applicant filed a Chapter 11 bankruptcy petition⁶ in April 2012. When the mortgagor again offered to discuss a loan modification, Applicant dismissed the bankruptcy petition. By July 2012, the mortgagor had denied the loan modification. Applicant filed a second Chapter 11 bankruptcy petition, which is still active.⁷

Applicant included five rental properties and his home, plus his other debts in his bankruptcy. He submitted a payment plan to the bankruptcy trustee, and his creditors were notified. While waiting for the court to confirm his payment plan, Applicant voluntarily made the minimum creditor payments suggested by the court. The court confirmed his amended payment plan in an order dated April 1, 2014. The court order indicates that Applicant met all its requirements, including payment of unpaid federal and state income taxes.⁸

During the bankruptcy proceedings, each property was appraised. The bankruptcy court established the new amount of the mortgages, set a fixed interest rate, and a fixed time for payment. Applicant's bankruptcy plan requires him to make the following monthly mortgage payments, including taxes and insurance: property 1 - \$1,536, property 2 - \$5,044, property 3 - \$574, property 4 - \$736, property 5 - \$652, and property 6 - \$2,982. Applicant lives in property 1. His wife and children live in property 2, and his wife pays him \$3,500 a month in rent. He receives monthly rent of \$900 from property 3, of \$650 from property 4, of \$950 from property 5, and of \$2,900 from property 6. The rental income on the five rental properties totals \$8,900. His mortgage payments on these properties total \$9,988. As of the hearing, he had one remaining payment on his car. Applicant complies with the payments established under his Chapter 11 bankruptcy plan. Beginning in May 2016, he will pay \$700 a month for many years to his unsecured creditors.⁹

Applicant provided updated financial statements based on his confirmation plan. His statements reflect his income and expenses each month. For June 2014, his income totaled \$21,706 from salary and rents, and his expenses totaled \$20,854. His expenses included \$2,600 for spousal support, \$2,000 for a college fund for his children, and \$500 assistance to his parents. He also paid several one time expenses. His monthly expenses will reduce by \$465 in July 2014 and by \$689 in September 2014.

⁶Applicant filed a Chapter 11, which allows businesses to reorganize their debts, based on his real estate business. GE 2; Tr. 80.

⁷GE 2; AE A-2; Tr. 29, 32, 80.

⁸GE 2; AE A-1; Tr. 32-33, 35-38, 52-54.

⁹AE A-1; AE A-9 - AE A-14.

He has sufficient income each month to pay his expenses. He stated that the bankruptcy proceedings helped him organize his finances and manage his income.¹⁰

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.

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.

¹⁰Response to SOR; AE A-11; AE A-14; Tr. 45-49. 62-63, 97.

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 when his income declined, and he was unable to obtain renters for his properties. 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:

- (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.

When Applicant decided to accept a permanent position, he agreed to a reduction in his salary. This reduction in income made it difficult for him to pay the mortgages on all his properties when he lost rental income directly related to the economic downturn that began in 2008. The lost income from salary and rents is a circumstance beyond his control. He tried to short sale three of his properties, but the mortgage lenders did not agree to two short sales. He also tried to renegotiate his loans on his primary residence and one property, but was not successful. When these options failed, he filed Chapter 11 bankruptcy and restructured his mortgage loans. He acted reasonably under the circumstances. AG ¶ 20(b) applies.

Applicant learned to organize and manage his income and expenses during the bankruptcy process. He has control over his finances, and he is resolving his debts through bankruptcy, an acceptable legal process. His efforts to negotiate new terms for several of his mortgages, his unsuccessful efforts to short-sale two properties, and the short-sale of one property reflect a good-faith effort to resolve his mortgage problems. Applicant did not ignore his debts; rather, he took steps to get control over his debts and his finances. He has acted responsibly about his debts and his finances. AG ¶¶ 20(c) and 20(d) apply.

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 is well-educated and intelligent. He is highly regarded by his management and his coworkers for his work ethic and his abilities. Applicant purchased a family home in 1997. In 2004 or 2005, he decided to purchase several homes as investment properties, then he decided to build a new and larger home for his family. At this time, he had sufficient income from his salary and rental income to pay his mortgages and other living expenses. Within a few years, the mortgage payments on some of his properties increased at a time when his salary declined and rental income from his properties declined. He attempted to sell three properties through a short-sale, but the mortgage lender only agreed to the sale of one property. He renegotiated the mortgage on his primary residence in 2009, but was unable to renegotiate it a second time. When he faced foreclosure on the family home, he filed a Chapter 11 bankruptcy. He dismissed this bankruptcy case a short time later when the mortgage lender agreed to discuss a modification of his loan.

The mortgage lender rejected his application for a second loan modification and instituted foreclosure proceedings. To save the family home and to reorganize his property debts, Applicant again filed a Chapter 11 bankruptcy petition in July 2012. For almost two years, Applicant made voluntarily minimum payments to his creditors until his bankruptcy repayment plan could be confirmed. During this time, he restructured his mortgages and his expenses. On April 1, 2014, the court confirmed his payment plan, and he began his actual payments on May 1, 2014. During this process, he paid any remaining federal and state income taxes owed. He also continued his payments on his car, which concluded in June 2014. He continues to repay his mortgage lender \$689 a month for property taxes paid on his behalf. This payment ends in September 2014. Over the last two years, he has established a track record for debt repayment through his bankruptcy payments. He has learned to better manage his income and expenses. He has an established plan to improve his financial situation and to pay his debts, which is his goal. His current repayment plan is reasonable and manageable with his income. Because he took control of his spiraling debt problems, his financial circumstances do not raise a concern about his fitness to hold a security clearance.

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

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