



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



In the matter of:)	
)	
)	ISCR Case No. 14-04093
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

08/13/2015

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 denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on November 28, 2012. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on October 17, 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 October 27, 2014, and he answered it on November 12, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on February 9, 2015, and I received the case assignment on February 26, 2015. DOHA issued a Notice of Hearing on April 17, 2015, and I convened the hearing as scheduled on May 13, 2015. The Government offered five exhibits (GE) marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. He did not submit any exhibits at the hearing. DOHA received the hearing transcript (Tr.) on May 21, 2015. At Applicant's request, I held the record open until June 15, 2015, for Applicant to submit additional matters. Applicant timely submitted six exhibits (AE) marked as AE A through AE G, which were received and admitted without objection. The record closed on June 15, 2015.

Procedural Ruling

In his opening statement, Department Counsel elected to withdraw SOR allegation 1.f on the grounds that this debt was not listed on the recent credit reports. (Tr. 12.) During the course of the hearing, Department Counsel orally moved to amend the SOR to revise the second date in SOR allegations 1.a and 1.b. Department Counsel sought to change the year 2011 to the year 2014 to conform with the testimony at the hearing. Applicant did not object to the change. The SOR was amended as requested. (Tr. 34-35.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.e of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.f of the SOR, which Department Counsel withdrew in his opening statement. 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 55 years old, works for a DOD contractor as a mechanical designer. He has been employed with his company since August 1994. His performance reviews over the last 20 years reflect good or above average ratings on most elements of his performance. Applicant has held a security clearance for many years without evidence of a violation of the rules for handling classified information. There is no evidence he mishandled company proprietary information.¹

Applicant graduated from high school and attended a vocational school for one year. He received a diploma from the vocational school in 1979. He attended college for

¹GE 1; Response to a SOR; Tr. 19, 42. On cross-examination, Applicant testified that he had not previously held a security clearance, which conflicts with his earlier testimony and his e-QIP answer to section 25 concerning his investigations and clearance record. His testimony on cross-examination is considered incorrect. (Tr. 42.)

seven months in 1996, but he has not earned any degrees. Applicant and his wife married in October 2012 and separated two years later. They have a seven-year-old daughter. Applicant and his wife share custody of their daughter. Applicant has a 31-year-old daughter from another relationship and a two-year-old granddaughter.²

Beginning in 2003, Applicant experienced the loss of his two brothers, his parents, and extended family members in his father's family. He developed problems with depression and eventually sought treatment for his depression. His medical records reflect a diagnosis in 2013 of major depressive disorder, recurrent episode in full remission. He currently takes medication that helps manage his depression.³

In 1996, Applicant rented a house from the brother closest in age to him. This brother died in 2003, and Applicant purchased the house from his brother's estate in 2004 for \$120,000. He financed the house with an adjustable rate mortgage. He also obtained a home equity line of credit on the house in 2005. He refinanced his house in 2007. When he did so, he combined the mortgage and the home equity line of credit into one loan. By 2010, Applicant fell behind in his mortgage payments on the house. The mortgage lender foreclosed on his property, and he moved out of the house in December 2010. According to the January 2013 credit report, the mortgage lender redeemed the collateral to settle the defaulted mortgage. Applicant provided documentation from the mortgage lender showing that his account has a zero balance.⁴

SOR allegations 1.c (\$171) and 1.d (\$225) relate to unpaid telephone bills. Applicant admitted owing both debts. He advised that the second debt, which is actually \$217, arose from his failure to return equipment to the creditor when he moved. He indicated he found the equipment just before his security clearance hearing, and he returned the equipment on May 31, 2015. The company credited his bill for \$210, leaving a balance of \$9.00. Applicant has not paid the \$171 debt.⁵

Applicant failed to file his federal and state income tax returns for the tax years 2009 through 2014. He explained that with the family deaths and his subsequent depression, he did not keep up with his bills and manage his finances. He stated that when he moved, he packed all his tax related papers. He continues to look for the papers. The Internal Revenue Service (IRS) has not filed a lien against Applicant or garnished his wages for nonpayment of his taxes. Applicant credibly stated at the hearing that he has not dealt with his taxes, even though he is fully aware that he needs to file his tax returns.⁶

²GE 1; Tr. 18.

³Response to SOR; AE C; Tr. 20, 27.

⁴GE 2; AE B; Tr. 23-25, 27-28, 37-39.

⁵GE 2 - GE 4; AE D; Tr. 21-22, 36, 45-46.

⁶GE 2 - GE 5; Tr. 20-21, 29, 32-34.

Applicant currently earns approximately \$4,298 a month in gross income, and he receives approximately \$2,578 a month in net income. His monthly mortgage payment is between \$1,240 and \$1,250 a month. His other monthly expense are unknown, as he did not submit a budget or otherwise detail his expenses. He does not have a car payment, and he does not pay child support. He advised that he was late with his mortgage payments in February, March, and April. The mortgage lender returned his checks because he did not include the late fees. He acknowledged that he could make his June payment in a timely manner. He has not shown that he had financial counseling.⁷

Applicant missed time from work due to his depression. He used his leave to cover the time lost from work and did not suffer any income loss because of his depression and lost work time. He stated that his depression was not totally debilitating. He was able to manage some of his finances. He also stated that things are better with mental health counseling.⁸

Applicant submitted multiple certificates indicating the training programs he has taken and completed during his 21 years of employment with his company. He also submitted eight letters of recommendation from coworkers, a friend, and supervisors. They all speak highly of Applicant's work skills and ethics. All trust him and recommend that he retain his security clearance. None indicate any knowledge of the financial issues raised in the SOR.⁹

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.

⁷AE A; Tr. 30-32, 42-45.

⁸Tr. 32-33.

⁹AE E.; AE F.

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;

(c) a history of not meeting financial obligations; and

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to file his federal and state income tax returns for the last six years. He fell behind in his mortgage in 2010, and the mortgage lender foreclosed on his property. He failed to pay or resolve several small debts. At the time the SOR was issued, most of the debts had not been resolved. These three 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.

Over a period of five years, Applicant experienced the loss of four close family members and other extended family. He developed symptoms of depression, for which he is now being treated. These are factors beyond his control that impacted his ability to focus on managing his finances. More recently, he and his wife separated and are in the process of divorcing. Although divorce is a factor beyond his control, Applicant provided no evidence of direct financial impact from his divorce. AG ¶ 20(b) is not fully applicable because Applicant has not shown that he acted reasonably under the circumstances by taking control of his financial issues after the crises passed and he had received treatment for his depression.

The record lacks any evidence of financial counseling. The mortgage lender foreclosed on Applicant's house, and documentation showed no balance owed on the mortgage. He also resolved the \$225 debt by returning the telecommunications equipment to the creditor. AG ¶ 20(c) applies to SOR allegations 1.d and 1.e.

Applicant has made no effort to take control of his tax issues, which have been outstanding for a long time. Likewise, he has not made any effort to resolve the \$171 debt identified in SOR allegation 1.c. AG ¶ 20(d) is not 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 reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.¹⁰ Applicant

¹⁰In 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

has worked steadily with the same employer for 21 years. He received good or better performance reviews during all of these years. He continually improves his work skills. His supervisors and coworkers praise his work skills and his work ethic. He is well-respected and highly regarded by his peers. All trust him and recommend him for a security clearance.

Applicant's financial problems began after the death of close family members and the onset of depression. Applicant continues to experience problems with focusing on the management of his finances. In particular, he has not actively worked to begin the process of filing his long, past-due federal and state income tax returns. Most citizens have a legal obligation to file federal and state income returns each year and to do so by April 15. The DOHA Appeal Board has held that

A person who fails to repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. Indeed, the Board has previously noted that a person who has a history of not fulfilling their legal obligation to file income tax returns may be said not to have demonstrated the high degree of judgment and reliability required for access to classified information. *See, e.g., ISCR Case No. 98-0608 at 2 (App. Bd. Jun. 27, 2000)*¹¹

Applicant's failure to file his income tax returns is a serious breach of his duties as a citizen and raises questions and doubts about his poor judgment. Applicant's knowing and persistent noncompliance with this important legal obligation weighs heavily against the grant of a security clearance. The favorable recommendations attesting to Applicant's strong work ethic are insufficient to overcome his continuing lack of judgment shown by his ongoing failure to file his federal and state income tax returns.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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:

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furtherance of a reasonable debt plan be the ones listed in the SOR.

¹¹ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014).

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Withdrawn

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for a security clearance is denied .

MARY E. HENRY
Administrative Judge