



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



In the matter of:)	
)	
)	ISCR Case No. 14-05659
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: Robert M. Martinez, Representative

09/15/2015

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 granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on February 10, 2014. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on January 27, 2015, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on February 16, 2015, and he answered it the same day. 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 27, 2015, and I received the case assignment on June 8, 2015. DOHA issued a Notice of Hearing on June 24, 2015, and I convened the hearing as scheduled on July 14, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant and four witnesses testified. He submitted exhibits (AE) marked as AE A through AE M, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 21, 2015. I held the record open until August 14, 2015, for Applicant to submit additional matters. Applicant timely submitted AE N - AE V, which were received and admitted without objection. The record closed on August 14, 2015.

Procedural 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. After consulting with his representative, Applicant affirmatively waived this right under the Directive. (Tr. 11)

Motions

At the hearing, I noted that the SOR showed an issue date of January 27, 2014. The cover letter that is mailed with the SOR indicated a date of January 27, 2015. The parties and I agreed that the January 27, 2014 date was a typographical error and agreed to correct the record. Upon motion, the date of the SOR was corrected to January 27, 2015. (Tr. 7)

Findings of Fact

In his Answer to the SOR, Applicant submitted documentation about the status of the SOR debts. He neither admitted or denied the factual allegations of the SOR. Thus, his answer is considered a denial of the factual allegations of the SOR.¹ He also provided additional information to support his request for eligibility for a security

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).

clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 47 years old, works as a firefighter for a DOD contractor. He has worked as a contract firefighter since October 1994. He also works part time as a battalion chief for a local community fire station and occasionally as a firefighter for sporting events. His supervisor testified. He has known Applicant for more than 22 years. He would put his life in Applicant's hands. When he is absent from work or unavailable, Applicant acts in his position because he is competent to do so. He has no concerns about Applicant's character or access to classified information. He does not believe Applicant is a security risk; however, he has not read the SOR or discussed financial problems with Applicant.²

Applicant graduated from high school. After high school, he enlisted in the Army National Guard and attended boot camp for 10 days, which was part of his enlistment agreement. He then attended college for awhile. He served in the Air Force from August 1986 until August 1994, when he received an honorable discharge.

Applicant met his first wife while stationed overseas. They married in May 1991 and divorced in February 1994. He married his second wife in November 1996, and they divorced in 2008. He has two stepchildren from this marriage with whom he established a parental relationship that continues. His stepson is 23 years old, and his stepdaughter is 21 years old and is serving in the United States Air Force. He married his third wife in May 2010 and they divorced in October 2012. He married his current wife in May 2015, and he has a three-year-old stepdaughter, who lives with him. His wife works as a teacher.³

Applicant volunteers as a coach for a local track club and coaches track at a local high school. He serves on the Board of Directors for a nonprofit and is a past president of the nonprofit. The executive director of the nonprofit for the last 18 years testified on behalf of Applicant. She described Applicant as dedicated to the program operated by the nonprofit. She indicated that as a member of the Board of Director's, Applicant worked with budgets and fund allocation. She was unaware of the issues in the SOR.⁴

Applicant provided a copy of his leave and earnings statements for June and July 2015. His gross and net income vary depending upon overtime and sleep pay. His gross income for June 2015 totaled \$7,921 and for July 2015, it totaled \$7,616. His net income in June 2015 totaled \$4,751 and for July 2015, it totaled \$4,567. In his budget prepared before the hearing, Applicant indicated that his wife earned \$3,333 in monthly gross income. Her net monthly income is estimated at \$2,000 for a total household

²GE 1; Tr. 29-32, 71-76.

³GE 1; Tr. 29, 34.

⁴GE 1; Tr. 29-30, 77-83.

income in June 2015 of \$6,751 and in July 2015 of \$6,567. Applicant did not provide any information which reflected that he earned income from his two part-time jobs, although he testified that he received \$900 a month from his firefighter part-time job. He did not clarify if this is gross or net income. It does increase his household income.⁵

Applicant's monthly expenses include \$1,836 for his mortgage, \$1,483 for vehicles and insurance; \$409 for utilities and water, \$110 for homeowners association fee and alarm system, \$201 for satellite and internet; \$184 for furniture loans; \$93 for credit cards and loans; and \$250 for tax payment to the Internal Revenue Service (IRS). Applicant did not include food costs, gasoline or miscellaneous expenses such as haircut, stamps, or repairs. His food costs are estimated at \$400; his gasoline costs are estimated at \$200; and miscellaneous expenses at \$100. His household expenses total approximately \$5,266. He has at least \$1,300 a month available to pay his old debts.⁶

The SOR identified 13 purportedly continuing delinquencies totaling approximately \$36,541 as reflected by credit reports dated February 22, 2014, October 2, 2014, and January 12, 2015.⁷ These debts and the current status are listed below:⁸

SOR ¶	Type of Debt	Amount	Status	Evidence
1.a	Judgment	\$ 1,011	Paid \$2,810 to include court costs, fees, interest	Response; AE A; AE B; Tr. 35-36
1.b	Loan	\$14,112	Loan forgiveness; 1099C	AE A; AE S; Tr. 36-37
1.c	Collection	\$ 544	Paid	AE A; AE C; AE S; Tr. 38
1.d	Medical	\$ 196	Paid	AE A; AE D; Tr. 38
1.e	Rent	\$ 3,942	Disputes; denies	AE V; Tr. 38-40
1.f	Bank collection	\$ 598	Paid	AE A; AE E; Tr. 41

⁵AE M; AE U; Tr. 48.

⁶AE M; Tr. 55.

⁷GE 3 - GE 5.

⁸Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

1.g	Retail collection	\$ 329	Paid	Response; AE A; AE F; AE R; Tr. 41
1.h	Medical collection	\$ 342	Paid	Response; AE A; AE G; Tr. 41
1.i	Medical collection	\$ 48	Paid	AE A; AE Q; Tr. 42
1.j	Credit card collection	\$ 7,239	Payment plan, \$100 a month	AE A; AE H; AE N; AE T; Tr. 42-43
1.k	Credit Card collection	\$ 7,238	Same as 1.j ⁹	Tr. 42-43
1.l	Medical collection	\$ 867	Paid	AE A; AE I; AE O; Tr. 44
1.m	Medical collection	\$ 75	Paid	Response; AE A; AE J; Tr. 44-45

Applicant discussed additional debts, which are not listed on the SOR. Applicant and his wife purchased a new home in the fall of 2014 and they settled on their purchase in December 2014. At the time, they lived in a rental house. Even though he had lived in the rental house for seven years, the owner would not release him from his rental contract. She sought the remaining three months of rent and filed suit in court. Applicant paid \$3,365 to settle this dispute in January 2015.¹⁰

Many of Applicant's debts are the result of the conduct of his third wife. As part of their divorce decree, he agreed to pay his third wife one-half or \$200 of her monthly car payment for one year. He did. She did not pay the monthly payment on the car, and it was repossessed. He bought the car at auction for \$2,300 and paid the remainder owed on the loan. This non SOR debt is resolved.¹¹

In 2010, Applicant took what he believed was a hardship loan from his 401(k) for \$30,000.¹² He later learned that his loan was considered a withdrawal, and he incurred a tax liability for the withdrawal, which is not alleged in the SOR as an issue. He used

⁹Applicant believes that debts in allegations 1.j and 1.k are the same. He negotiated a payment plan with a creditor and is in compliance with the requirements of the plan. He spoke with the creditor after the hearing for verification of their payment agreement. The company provided a letter indicating that he actually owes more than \$16,000 on the debt. It is unclear if this amount is the result of combining the two accounts or only one account. See AE N; AE T; Tr. 42, 50.

¹⁰AE K; Tr. 45-46.

¹¹GE 3 - GE 5; AE A; AE L; Tr. 46-47.

¹²Applicant took an \$8,000 loan from his 401(k) in December 2014 to help with closing costs on his new home. He pays this loan at the rate of \$171 a month. His payment is deducted biweekly from his pay. AE U; Tr. 59.

the money to pay medical bills owed by his third wife. At the time of his personal subject interview, he indicated that he owed the IRS approximately \$17,000 in back taxes for the tax years 2010, 2011, and 2012. He developed a payment plan, which has increased to \$250. At the hearing, he stated that he now owed about \$8,000 on this debt. Applicant requested and received an extension of time (generally six months) to file his federal and state income taxes for the tax year 2014. The income identified on the IRS form 1099c from the creditor in allegation 1.b will be included as income for the tax year 2014. He anticipates he will owe additional taxes and plans to include the balance in his current payment plan with the IRS.¹³

Applicant denied living in an apartment owned or managed by the creditor in SOR allegation 1.e. Applicant believed that his brother lived there. The creditor told him that it had his signature on the lease, but Applicant denied signing a lease. If his name is on the lease, then it is a forgery. He requested a copy of the lease and other documentation from this company. The creditor declined to give him any documentation. The February 2104 credit report indicates that this debt became delinquent in 2010.¹⁴

Applicant became aware of the Government's concern about his past-due debts in March 2014. The evidence of record reflects that he did not take action on the SOR debts until after he received the SOR. He explained that he requested his second and third wife to accept responsibility for their portion of the debts. He also sought a statement from his brother about the lease. When they failed to agree or to provide the information, he began working to resolve the debts.¹⁵

Applicant's former father-in-law, a pastor, described Applicant as a good son-in-law and a great guy, who loves his country. A co-worker and firefighter also testified. He has known Applicant for 20 years. Applicant demonstrates good judgment and decision-making at work. His work is professional. His co-worker was aware of financial problems.¹⁶

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.

¹³GE 2; AS S; Tr. 55, 60.

¹⁴AE V; Tr. 38-39,

¹⁵Tr. 68.

¹⁶Tr. 84-92.

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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems during his third marriage because of the poor decision-making by his third wife. A small portion of the debts occurred during his second marriage. Most of the debts had not been resolved when the SOR was issued. 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial problems arose primarily from the financial decisions made by his third wife and secondarily from financial decisions made in his second marriage. The conduct of his third wife is a factor beyond his control.

The record lacks evidence that Applicant received financial counseling. However, he took responsibility for the debts in the SOR. He contacted all the creditors to discuss a resolution of his debts. He paid the smaller debts and negotiated a payment for one larger debt. The creditor holding the largest debt decided to forgive his indebtedness

and issued an IRS form 1099C, which will result in a tax liability for Applicant. He will add this debt to his existing IRS payment plan. Applicant actions reflect a good-faith effort to resolve his debts. He has sufficient income to pay his usual and customary living expenses. He lives within his financial means. AG ¶¶ 20(c) and 20(d) apply.

Applicant lived in a rental house for seven years prior to purchasing his current home in December 2014. He settled the debt related to his early departure from his rental house to move into his new home. The rental income debt became delinquent in 2010, while he lived in his rental home. He was not living in two places at the same time. Thus, he has a legitimate reason to dispute the claimed monies owed for a rental apartment. AG ¶ 20(e) 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.

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’s financial problems arose primarily from his third marriage. His third wife refuses to accept responsibility for the financial decisions she made, leaving the debts for him to pay. While he would prefer that she pay these debts, he has accepted responsibility for the debts and taken steps to resolve them. He has paid the smaller medical bills, and he has a payment plan for the largest remaining debt. When he withdrew money from his 401(k) several years ago, he incurred a tax penalty for the early withdrawal. He immediately began working on a resolution of the tax debt with the IRS. He has a payment plan that is satisfactory to the IRS, and he has been compliant with the plan as shown by the lack of a lien or wage garnishment by the IRS. He recognizes that because his largest creditor forgave his debt and issued an IRS form 1099C, the debt forgiveness is income on which he will owe income taxes. He does not anticipate a problem with the IRS when he asks to include this money in his payment plan. Given his history of paying his IRS debts, his statement that he will include the additional taxes owed in his current payment plan is credible. He denied only one debt, and since he lived in a rental house for seven years prior to purchasing his current home, he has a legitimate reason to dispute the debt. Applicant has a track record of paying not only many of his SOR debts, but he also resolved two other debts not listed in the SOR and worked with the IRS to resolve his old, outstanding tax debt.

Applicant works a dangerous job. His supervisor thinks highly of him and has no concern about Applicant’s ability to protect classified information. He would trust Applicant with his life. Applicant performs community service and as a member of a

Board of Directors, he is responsible to the allocation and manage of the organization's funds. No concerns have been raised by the long-serving executive director of this organization about his handling of the organization's funds. Applicant has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. He has sufficient income to meet his living expenses and to pay his debts. (See AG ¶ 2(a)(6).) Of course, the issue is not simply whether all his debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. His old debts have been generally resolved through payment or a payment plan and 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

Subparagraphs 1.a - 1.m: 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 a security clearance is granted.

MARY E. HENRY
Administrative Judge