



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



In the matter of:)	
)	
)	ISCR Case No. 14-06159
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

08/06/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on January 30, 2013, which he signed on February 4, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on January 22, 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. He submitted a notarized, written response to the SOR allegations dated February 18, 2015, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on June 1, 2015. Applicant received the FORM on June 19, 2015. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response dated July 6, 2015. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on August 6, 2015. The Government submitted six exhibits, which have been marked as Items 1-6 and admitted into the record. Applicant's response to the SOR has been marked as Item 3, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit (AE) A-M.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.d and 1.f of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶ 1.e 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 49 years old, seeks employment as a contract investigator for a DOD contractor. Applicant operates an independent investigative agency, which he began in September 2005 after being unemployed from June 2004 until August 2005. Applicant relocated his investigative agency in 2012. Applicant advised that his investigative business has been slow and erratic over the years. Since 1991, he has periodically held security clearances with various federal agencies.²

Applicant is a high school graduate. He received a bachelor's degree in 1996 and a master's degree in 2005. Applicant enlisted as an inactive reservist in the United States Navy and served from June 2005 until June 2007. He received an honorable discharge in 2007. Applicant has never been married.³

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).

²Item 3; Item 4; AE B - AE G.

³Item 4.

The SOR lists three past-due education loans totaling \$15,246. Applicant borrowed this money from the Department of Education to pay for his master's degree. Between May 2011 and November 30, 2011, Applicant made seven monthly payments of \$30 each (total \$210) to the United States Department of Education by way of a payment center. In May 2012, he received a letter from the Department of the Treasury Management Service about his largest student loan. The Treasury Department applied two federal payments of \$7,562 and \$402, totaling \$7,964, to his student loan debt. The \$7,964 payment left a \$1 balance, effectively eliminating this debt.⁴

In a letter dated February 4, 2013, the Department of Education advised Applicant that he paid \$1,866 in interest on loans in default. With his response to the SOR, Applicant provided documents which indicate that he made nine monthly payments of \$25 each, totaling \$225, from April 2014 through December 2014 to the Department of Education. In his response to the FORM, Applicant submitted additional documentation showing eight monthly payments of \$25 each, totaling \$200, to the Department of Education for payments due between January 2015 and August 2015.⁵

Applicant completed documentation with a limited partnership representing the Department of Education to rehabilitate his student loans. In a letter dated July 2, 2015, the company stated that Applicant could pay \$25 a month for nine months to rehabilitate his student loans based on his income. Applicant had made two payments under the agreement. All three of Applicant's student loans identified in the SOR are listed in the consolidated payment with a single, but different, loan number.⁶

SOR allegation 1.d (\$365) concerns a credit account opened in June 2002 with a date of last activity of September 2006. Applicant believes that this debt was included in his 2004 bankruptcy petition. The court discharged his debts on March 30, 2005. The debt is listed on the February 2013 credit report, but it is not listed on the more recent credit reports. The record lacks conclusive evidence of payment of this bill. However, in August 2011, the Department of Homeland Security granted Applicant a security clearance. No mention was made about this debt in his background investigation, and it did not prevent the grant of a security clearance.⁷

Applicant acknowledged filing for bankruptcy in 2004. The court discharged his debts, except his school loans, in March 2005. Applicant provided documentation showing that he paid the debt in SOR allegation 1.e (\$55) in April 2013 after meeting with the investigator from the Office of Personnel Management (OPM).⁸

⁴Item 1; Item 3.

⁵Item 3; AE M.

⁶AE A; AE J.

⁷Item 3; Item 5; Item 6; AE A; AE C; AE L.

⁸Item 3, Attachment to the Response to the SOR.

Applicant's current income and expenses are unknown. He did not provide a budget or other information about his monthly income and expenses. His credit reports did not indicate a misuse of credit cards, nor do the reports show efforts to obtain loans to finance a lifestyle.

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 potential 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.

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 he lost his job in 2004 and has worked sporadically since. Some 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.

Applicant lost his job in 2004. He never found full-time, gainful employment again. In September 2005, after more than a year of unemployment, Applicant started his own private investigation business. His work levels ebb and flow with the economy.

The changing dynamics of the economy make it difficult for him to control the volume of work coming to him as a small independent business. The loss of business directly connected to the economy is factor beyond his control. He worked to resolve his student loan debts in 2011 and 2012 when he had more work and income to pay the loans. In May 2014, before the issuance of the SOR, he reached an agreement with the Department of Education to pay \$25 a month on his school loans. He has complied with the terms of the agreement. Even though he has made these small payments as a show of good faith, the Department of Education transferred his debt to a collection agent. Applicant negotiated a plan to rehabilitate his school loans with the collection agent, and he has made the first two payments as agreed. Applicant has acted reasonably under the circumstances. AG ¶¶ 20(b) and 20(d) apply.

Applicant paid the \$55 debt in SOR allegation 1.e in 2013 after learning that the debt existed. Applicant filed bankruptcy more than 10 years ago. Except for his student loans, he has managed his income and expenses. He lives frugally, and he does not incur credit card debt or other types of debt. The \$365 may have been discharged in bankruptcy, but Applicant did not provide a list of his creditors included in his bankruptcy petition, which would show the inclusion of this debt. The debt is not listed on more recent credit reports for unknown reasons. Given he maintains control over his finances and does not live beyond his income level, this debt does not raise a security concern.

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.⁹

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. Since filing his bankruptcy petition more than 10 years ago, Applicant has lived frugally and has not used credit of any type to finance a lifestyle. He pays his school debt regularly and continues to work with the creditor to rehabilitate his loans. His ability to fully pay the loans depends upon his ability to create more work for himself. In the meantime, he pays an amount he can afford and is acceptable to the creditor. He has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) The one small debt that he has not definitively shown is resolved cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a position of trust. While one debt remains unresolved, it is insufficient to raise security concerns. (See AG ¶ 2(a)(1).) Overall, the evidence of record reflects that Applicant manages his limited income.

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.

⁹In 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.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

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