



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-04437
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan Olmos, Esquire, Department Counsel  
For Applicant: *Pro se*

01/14/2016

**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 2, 2014. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on February 6, 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 April 7, 2015, and he answered it on May 11, 2015. The Government requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on September 10, 2015, and I received the case assignment on September 24, 2015. DOHA issued a Notice of Hearing on October 2, 2015, and I convened the hearing as scheduled on October 21, 2015. 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 through AE E, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 30, 2015. I held the record open until November 20, 2015, for Applicant to submit additional matters. Applicant timely requested additional time to submit the requested information. By Order dated November 20, 2015, I held the record open until December 1, 2015 for Applicant to submit additional information. Applicant timely submitted AE F - AE S, which were received and admitted without objection. The record closed on December 1, 2015.

## **Procedural Ruling**

### **Motion**

At the hearing, Department Counsel sought to amend the SOR by withdrawing SOR allegation 1.g on the grounds that this allegation was the same as allegation 1.b. The motion was granted. SOR allegation 1.g is withdrawn from the SOR. (Tr. 8)

## **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.d and 1.g - 1.j of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.e and 1.f of the SOR on the grounds these debts belonged to his wife only.<sup>1</sup> 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 47 years old, works as an electronics technician and product tester for a DOD contractor. He began working for his current employer in March 1999. His supervisor described him as an outstanding tester, a creative problem solver and a detail-oriented individual. His supervisor opined that he had a high level of integrity and

---

<sup>1</sup>When 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).

a well-developed sense of responsibility. Applicant has assumed additional duties, including escorting non-company employees in and out of the building. He recommends Applicant for a security clearance.<sup>2</sup>

Applicant graduated from high school in 1986. He has some college credits. He served in the United States Marine Corps Reserve as an active reservist from March 1988 until January 1993, when he received an honorable discharge. He served in the Air National Guard from January 1993 until December 1995. He received an honorable discharge. He received his electronics training in the military. Applicant worked part-time in self-employment as an in-home sales representative from 2008 to 2009, when his shift changed at his primary job. The company is no longer in business.<sup>3</sup>

Applicant married his first wife in February 1991, and they divorced in January 1995. He and his wife married in May 1996. They have two sons, ages 19 and 14, and a daughter, age 17. All his children live at home. His wife works as a medical biller. He and his wife separated for a short time around 2013 or 2014.<sup>4</sup>

Since their marriage in 1996, Applicant's wife has managed the household finances. Applicant advised that they disagreed about how much was being spent on their children's activities. His wife wanted to give their children whatever they wanted, and he disagreed. For many years, Applicant and his wife have disagreed about finances. He set some bills to be paid automatically. Once a year the authorization was to be renewed. His wife did not realize this fact and did not renew the payments. His wife had knee replacement surgery in 2015, and one son had sinus surgery. He is paying medical bills from these surgeries.<sup>5</sup>

Applicant's wife earned \$29,897 in 2014 and she had \$2,358 withheld for federal taxes. As of December 4, 2015, she earned \$27,299, and she had \$3,239 withheld for federal taxes. She had an additional \$92 a paycheck withheld for federal taxes starting in May 2015.<sup>6</sup> Applicant claims three exemptions and is considering reducing his exemptions to zero.<sup>7</sup>

Applicant provided a budget, which shows a net monthly household income of \$6,100.<sup>8</sup> His budget reflects the following expenses: \$750 for rent, \$225 for rent

---

<sup>2</sup>GE 1; AE B; Tr. 21-22.

<sup>3</sup>GE 1 - GE 3; Tr. 22-23.

<sup>4</sup>GE 1; GE 3; Tr. 19, 23, 34-35, 61.

<sup>5</sup>Tr. 22, 32, 64.

<sup>6</sup>Applicant incorrectly thought she had \$200 a paycheck withheld. Tr. 42-43

<sup>7</sup>AE G.

<sup>8</sup>Applicant did not provide a copy of his pay statement.

insurance, \$250 for utilities, \$800 for cable, phones, and internet, \$230 for miscellaneous housing expenses, \$1,000 for groceries and eating out, \$100 for gasoline, \$100 for parking, \$192 for car insurance, \$240 on a car loan, \$15 on car repairs, \$50 on medicine, \$50 on clothing, \$100 on donations, \$50 on entertainment, \$50 on personal expenses, and \$400 on credit cards or miscellaneous expenses for total monthly expenses of \$4,702. He has a remainder of \$1,398 a month for debt payment.<sup>9</sup>

When he met with the Office of Personnel Management (OPM) investigator in May 2014, Applicant advised that he did not file his federal income tax returns for the tax years 2009, 2010, and 2012 (SOR allegation 1.a). Each year, Applicant and his wife timely asked for an extension to file their federal income tax returns. The Internal Revenue Service (IRS) granted them a six-month extension until October of the filing year. For each of these years, they forgot to file their federal income tax return. Applicant learned about their failure when he attempted to change the number of his exemptions at work. The IRS had placed a lock on his account. When he called about the lock, he learned that the tax returns had not been filed. He does not recall the date when all this occurred. At the same time, he had moved out of the family home with one son. All the tax documents had been packed for either he or his wife to file the returns. Neither did. He was able to reduce the number of exemptions claimed when he talked with the IRS. He believed this change would cover the taxes owed. The IRS is reviewing the possibility of waiving some of the interest and penalties on his debt.<sup>10</sup>

After the hearing, Applicant provided a copy of the IRS transcripts for the tax years 2009 through 2012 and 2014.<sup>11</sup> He did not provide a copy of the tax transcript for 2013. His tax transcripts provide the following information about each tax year:

Tax year	Gross income	Extension request	Date filed date of process	Tax withheld	Tax owed, interest, penalties	Tax paid over withholding; balance due
2009	\$78,000	yes	5/13/15; 9/7/15	\$730	\$3,414, plus \$1,103	\$75; \$4,493 <sup>12</sup>

---

<sup>9</sup>AE H.

<sup>10</sup>GE 3; Tr. 32-35, 43-46, 54-55.

<sup>11</sup>AE O - AE S.

<sup>12</sup>AE E; AE O.

2010	\$79,000	yes	5/13/15; 9/17/15	0 <sup>13</sup>	\$6,664, plus \$4,097	\$100 and \$110 tax abated; \$10,762 <sup>14</sup>
2011	\$98,940	no	4/15/12; 6/11/12	\$3,863	\$7,001, plus \$1,012	\$397; (4/15/14 - credit-2013 return); \$3,799 <sup>15</sup>
2012	\$107,548	yes	5/13/15; 7/6/15	\$5,497	\$10,166, plus \$155	\$540; \$6,219 <sup>16</sup>
2014	\$122,163	no	4/15/15; 7/20/15	\$11,332	\$14,025 plus \$65	\$25; \$2,796 <sup>17</sup>

During his May 2014 meeting with the OPM investigator, Applicant advised that he had been in touch with IRS about payment of his debt. Applicant and the IRS reached an agreement on June 22, 2015 about the payment of his debt for the above tax years. Under the terms of the agreement, Applicant would pay \$225 a month beginning in August 2015. Applicant made two payments (August and September) under the agreement. When he received the monthly payment notice, he noticed that it only referenced the tax years 2011 and 2012. He immediately contacted the IRS. The IRS voided the first installment agreement and mailed Applicant a new agreement, which he and his wife signed on October 15, 2015. Under the terms of the new agreement, he pays \$225 a month for one year beginning November 20, 2015. In November 2016, he will start paying \$405 a month on his tax debt, which totals \$28,000. He made his November 2015 payment. The IRS did not file a tax lien nor did it garnish his wages, although it issued a notice to levy his taxes due for the tax year 2011 only. The IRS did not levy his income.<sup>18</sup>

---

<sup>13</sup>Applicant's tax transcript for 2010 indicates that no money was withheld from his pay for taxes. This may be an error in information recording or it may be a fact that Applicant did not have money withheld from his pay. Since money has been withheld from his pay each year, this appears to be inconsistent with his usual practice. He has not explained. He may need to review this information with the IRS and his employer because if money has been withheld for payment of taxes, he should receive a credit on his tax debt.

<sup>14</sup>AE E; AE 9.

<sup>15</sup>AE Q.

<sup>16</sup>AE E; AE R.

<sup>17</sup>AE S. Applicant worked an increased amount of overtime in 2014 and in 2015, which impacted his tax liability. Tr. 43-44.

<sup>18</sup>GE 3; AE A; AE C; AE M; AE N; Tr. 35-43.

The SOR identified eight additional unpaid debts totaling \$4,415. SOR allegation 1.g was withdrawn at the hearing and will not be discussed. SOR allegation 1.b concerns a collection account for \$740. Applicant paid this debt in full and verified the resolution of the debt.<sup>19</sup>

SOR allegations 1.c (\$70) and 1.d (\$40) concern unpaid medical bills. Applicant traced the medical provider for the 1.c debt and paid the balance owed. He did not provide proof of his payment. After a careful review of the credit reports and documentation in the record, I conclude that allegation 1.d is the same debt as alleged in allegation 1.i (\$40) because the account numbers are the same. Applicant paid this debt in April 2015.<sup>20</sup>

SOR allegation 1.e (\$1,467) concerns a credit card in his wife's name only. The original creditor sold the account to a collection agency. The collection agency obtained a judgment against his wife only. She paid the judgment as shown by a release of judgment document. The account number for this account is the same account number on his credit report. Applicant has resolved this debt.<sup>21</sup>

As with allegation 1.e, SOR allegation 1.f (\$1,104) is in Applicant's wife name only. The original creditor sold the account to a collection agent. Applicant verified through the collection agent that this debt has been paid in full.<sup>22</sup>

The last SOR debt (1.h - \$150) relates to a medical bill. Applicant paid this debt in April 2015 and verified the payment. The April 2014 credit report indicates that Applicant paid three other charged-off accounts not listed in the SOR. He provided proof that he paid one of these accounts, and he provided proof that he paid two other debts, which are not listed on the SOR on his credit reports of record. One new debt arose in November 2015, which he planned to pay.<sup>23</sup>

In his 2009 e-QIP, Applicant advised that he had recently learned that his 2004 state income tax return had not been filed. He filed the return and paid any taxes owed. His state income tax returns are filed and he does not owe any taxes. The record lacks any evidence of credit counseling.<sup>24</sup>

---

<sup>19</sup>AE D; AE L; Tr. 8.

<sup>20</sup>Response to SOR; GE 4; G5 5; AE F; Tr. 29.

<sup>21</sup>GE 4; GE 5; Response to SOR; AE J; Tr. 30.

<sup>22</sup>GE 4; GE 5; Response to SOR; AE K; Tr. 30.

<sup>23</sup>GE 4; Response to SOR; AE F; Tr. 32.

<sup>24</sup>GE 2; Tr. 50-51.

## 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.

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's primary financial problem relates to his failure to timely file his federal income tax returns for three tax years. He also incurred some delinquent credit card debt and medical bills, which had not been paid at the time the SOR was issued. 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:

- (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 contacted the creditors in SOR allegations 1.b through 1.d, 1. f, 1.h and 1.i. He made arrangements to pay these debts, and he did. His efforts reflect a good-faith effort to resolve these debts. The debt in SOR allegation 1.e belonged to his wife. The creditor sold the debt to a collection company, which filed a lawsuit and obtained a judgment against his wife only. She paid the judgment, and the collection company released the judgment with the court as paid. This debt is resolved.

Concerning his failure to file his federal income tax returns in 2009, 2010, and 2012, Applicant did not have an intent to avoid paying his taxes, as shown by his request for an extension of time to file the returns. The IRS granted his request, but he forgot to prepare and file his tax returns within the additional time frame. When he tried to reduce his exemptions, he became aware of his failure. He began a long process to rectify his neglect. His failure to timely file his tax returns shows a lack of responsibility by him and failure to comply with his obligations as a United States citizen. To his credit, Applicant eventually filed his federal income tax returns prior to the IRS seeking to recover the taxes owed through liens and garnishments. Once he filed his returns, he developed a payment plan for any unpaid taxes and the penalties, fees, and interest owed. When his monthly billing statement arrived in October 2015, he noticed that it did not cover all the tax years and immediately contacted the IRS. The IRS voided the first agreement, and Applicant signed a new agreement covering the full amount of the taxes he owed. He has a payment plan for the remaining monies owed to the IRS, and he has made the first several payments as required. Applicant and his wife have a budget and sufficient income to pay their customary living expenses and their tax debt. Their finances are under control. Applicant has mitigated the security concerns under AG ¶¶ 20(c) and 20(d).

### **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. With the exception of his federal tax debt, the debts in the SOR are under \$1,500 with most under \$750. The two largest debts belonged to his wife. Two listed debts duplicated other SOR debts. He has resolved all the debts and several other debts not listed in the SOR. He has been paying medical bills for his wife and son from surgeries in 2015. Applicant neglected to pay his federal income tax returns for three years, which shows a lack of responsibility and failure to comply with his obligations as a United States citizen. When he attempted to reduce the number of exemptions he claimed, he could not do so through his employer and contacted the IRS. He learned that he and his wife had not filed all their tax returns. To his credit, Applicant eventually filed his federal income tax returns prior to the IRS seeking to recover the taxes owed through liens and garnishments. Once he filed his returns, he developed a payment plan for any unpaid taxes and the penalties, fees, and interest owed including the 2014 tax year.<sup>25</sup> His wife has increased the amount of money withheld from her pay for taxes and he reduced his exemptions from five to three. He

---

<sup>25</sup>In light of the information contained in his tax transcripts, Applicant may wish to consider meeting with an accountant to make sure the IRS has all the correct information on which to assess his tax liability.

plans to reduce his exemptions to zero. While he has not provided evidence of this intent, his other evidence of positive actions favors a finding that he will again reduce his exemptions to reduce future tax liability. He and his wife are taking the necessary steps to eliminate future tax liability and to pay their current tax debt. They have sufficient income to do, and he is compliant with his payment plan for the remaining monies owed to the IRS. He is aware that he must remain cognizant of his duty to timely file his income tax returns, both federal and state, and to pay or make arrangements to pay any remaining tax debt.

Smaller debts got lost in the shuffle of other bills, but these debts are now resolved. Applicant has a plan to resolve his tax debt. He has shown a track record for resolving his bills as shown by the resolution of the remaining SOR debts and other non-SOR debts. His finances are under control and he has sufficient income to pay his customary living expenses. Most significantly, he has taken affirmative action to pay or resolve the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) It will take him some time to fully resolve his federal tax debt. Even so, this debt cannot be a source of improper pressure or duress because he has sufficient funds each month to meet the monthly payment obligations, and he has assumed responsibility for the debt. 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 his tax debt is not fully paid, he is paying this debt and working with the IRS to reduce the interest and penalties assessed against him. His tax debt is 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
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
Subparagraph 1.g:	Withdrawn
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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