



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



In the matter of:)	
)	
)	ISCR Case No. 14-06282
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

11/16/2015

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 and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on January 27, 2012. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on February 7, 2015, detailing security concerns under Guideline E, personal conduct, and 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, and he submitted a notarized, written response to the SOR allegations dated April 1, 2015. 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 August 18, 2015. Applicant received the FORM on August 26, 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 September 15, 2015. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on October 13, 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 and the SOR have been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 2.f of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 2.a, 2.b, 2.h, 2.o, and 2.p of the SOR. In his response to SOR ¶¶ 2.c - 2.e, 2.i - 2.n and 2.q, Applicant denied any knowledge of outstanding medical bills and asked for time to investigate. As to SOR ¶ 2.g, he indicated that he thought this debt belonged to his father, and he would investigate. His responses to these SOR allegations are deemed a denial.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, works as a technician foreman for a DOD contractor. He began his current employment in December 2011. He worked in private industry as a HVAC technician from November 2005 through December 2011. He was unemployed from November 2001 until November 2005. During this time, he cared for his ailing father.²

Applicant completed high school in 1985. He and his wife married in December 2005. He and his wife have a 10-year-old daughter and an 8-year-old son. His son is

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 2.

legally disabled and has been since birth. He has a 15-year-old step daughter and a 21-year-old step son.³

Beginning in 2007, Applicant and his wife began to fall behind in their bills. In July 2010, Applicant and his wife retained the services of credit-repair company to help them gain control of their finances. Their relationship with this company ended in November 2013. Under the terms of their agreement with the credit-repair company, Applicant and his wife paid this company \$352 a month, and the company worked to resolve their debts. The debts included in the payment plan through the credit-repair company are not specifically identified. However, Applicant provided a copy of his payment history. This document shows his payments to the credit-repair company, and debts paid by this company. Applicant also submitted settlement offers from several creditors, and the payment history shows these debts were paid by this company. I have carefully reviewed the payment history; the account numbers listed next to the creditor payment; the name of the creditors paid; and the credit reports in the record.⁴

The SOR identified 17 purportedly continuing delinquencies as reflected by credit reports from 2012 and 2014, totaling approximately \$19,733. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. 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.

When Applicant completed his e-QIP in January 2012, he acknowledged that he owed past due debts. He denied filing bankruptcy and having an issue with gambling. He filed his tax returns each year. He advised that he hired a credit-repair company to help resolve his debts. Applicant listed 15 past-due debts on his e-QIP and identified the status of each debt to the best of his knowledge.⁵ Of these 15 debts, eight are listed on the SOR.⁶

As previously indicated, Applicant submitted his debt-payment history. Through this document, he verified that he paid six debts, totaling \$4,119, listed on his e-QIP and not included on the SOR. These payments are verified by the 2012 and 2014 credit reports in the record. The payment history also reflected that Applicant paid at least nine other creditors. While the creditors are listed for payment purposes, some creditors are not the original creditor. Many of these creditors and the original debt owed are not identified on any credit report. For purposes of this decision, Applicant has established

³Item 2; Item 3.

⁴Item 3.

⁵Item 2.

⁶Item 1.

that he paid nine creditors for debts not listed in the SOR. Some of these debts may relate to medical bills.⁷

Of the 17 SOR debts, ten debts relate to medical bills for his disabled son. (SOR ¶¶ 2.c - 2.e, 2.i - 2.n, and 2.q) In his response, Applicant indicated that he was not aware of these debts. He did list three of these medical debts on his e-QIP. The 2014 credit report identifies only three medical debts (SOR ¶¶ 1.c - 1.e). The September 2015 credit report submitted by Applicant does not list any outstanding medical bills. Applicant advised that he has private insurance as well as medicaid to pay for his son's medical care. With both insurances, his son's medical care is generally 100% covered. He stated that he was working with his insurance companies on resolving any open medical accounts.⁸

Applicant's payment history documentation from the credit-repair company shows that he paid the \$544 credit card debt in SOR allegation 2.a in 2011; that he paid the \$515 credit card debt in SOR allegation 2.b in 2011; that he paid the \$138 debt in SOR allegation 2.h in 2011; and that he paid the \$789 debt in SOR allegation 2.p in 2012. The account numbers on the payment history match the account numbers on the credit reports.⁹

In his response, Applicant stated that he thought the \$3,646 debt in SOR allegation 2.g belonged to his father. A careful review of the record documents indicated that this debt is Applicant's account. He listed it on his e-QIP. The 2014 credit report shows that the debt is a paid charged-off account. The September 2015 credit report shows that payments were made on this account and that it is paid and closed. Applicant has resolved this debt. Based on the record evidence, the debts in SOR allegation 2.f (\$5,783 judgment) and 2.o (\$4,654) remain unpaid. The judgment is listed on the September 2015 credit report, and Applicant advised that he was working to resolve this debt in his response to the SOR. The \$4,654 debt is not listed on the 2014 or 2015 credit reports.¹⁰

The 2014 and 2015 credit reports do not show new, unpaid debts. The unpaid debts listed in the SOR and on the 2012 and 2014 credit reports occurred between 2007 and 2011. Applicant did not submit a budget showing his monthly income and expenses.¹¹

⁷Item 3.

⁸Item 1; Item 2; Item 5; Item 6; AE A.

⁹Item 3; Item 6.

¹⁰Item 1; Item 3; Item 5; Item 6; AE A.

¹¹Item 5; Item 6; AE A.

In his response to the SOR, Applicant acknowledged that he failed to answer the interrogatories apparently mailed to him in September 2014. The SOR does not allege that his action was intentional, and the record lacks any evidence that Applicant refused to respond or otherwise cooperate with discovery. Outside of the allegation, this issue is not discussed nor does the record contain any evidence related to this allegation.

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 E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

For AG ¶¶ 15(b) to apply, the Government must establish that Applicant deliberately or intentionally refused to answer the interrogatories mailed to him in September 2014. The record lacks any evidence showing that Applicant deliberately or intentionally refused to answer the interrogatories. A simple failure to answer is insufficient to establish the Government's burden of proof. Allegation 1.a is found in favor of Applicant.

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 between 2007 and 2011. Most of the debts had not been shown as 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:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (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 did not explain how his debts became delinquent. Thus, AG ¶¶ 20(b) is not applicable. From the information in the record, Applicant's debts occurred primarily from 2007 through 2009. In 2010, he and his wife retained the services of a credit-repair company to help resolve their debts. By 2013, Applicant had resolved many of his outstanding debts. On his behalf, the credit-repair company contacted Applicant's creditors and negotiated settlements, which it then paid on his behalf, using money from his payments into the plan. The actions of the credit-repair company on behalf of Applicant show a good-faith effort to resolve his debts. His finances are under control as shown by the lack of new past-due debts. He has worked to resolve his debts since 2010 and has been able to do so. AG ¶¶ 20(a), 20(c), and 20(d) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a security clearance to Applicant under the hole-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. His unemployment played a role in his later financial problems, but the medical issues of his young son created significant financial issues for him between 2007 and 2011. He and his wife recognized that they needed help with their finances and sought the assistance of a credit-repair company. They made a good decision in 2010 to seek help. Over the next three years, they resolved many of their debts through this company. They established a track record for resolution of their past debts and a track record for paying their current bills, as they have not incurred significant, unpaid debt for the last four years. They showed good judgment when they took control of their debts and by their current prudent financial management. They have a special needs child, who will always require additional resources from them. Applicant is working to resolve the judgment, but has not yet done so. The \$4,654 debt is unknown to Applicant and absent from his recent credit reports. The reason for the removal of this debt from his credit report is unknown, but it is reasonable to believe that the credit-repair company may have successfully challenged it as not belonging to Applicant. These debts 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 security clearance. While some debts remain unpaid, they 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 and personal conduct under Guidelines F and E.

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 E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a - 2.q:	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