



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



In the matter of: )  
)  
) ISCR Case No. 14-03310  
)  
Applicant for Security Clearance )

**Appearances**

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

12/14/2015

**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, signed, and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on May 7, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on April 1, 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 22, 2015, and he answered it on June 4, 2015. Applicant 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 21, 2015. DOHA issued a Notice of Hearing on October 6, 2015, and I convened the hearing as scheduled on October 22, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant testified. He submitted one exhibit (AE) marked as AE A, which was received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 3, 2015. I held the record open until November 20, 2015, for Applicant to submit additional matters. Applicant timely submitted AE B - AE H, which were received and admitted without objection. The record closed on November 20, 2015.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR with explanations. His admissions are incorporated herein as findings of fact. 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 36 years old, works as a systems engineer for a DOD contractor. He began his current employment in October 2012. For the previous two years, Applicant worked as a systems analyst for another DOD contractor. Applicant was unemployed from April 2010 until October 2010. Before his unemployment, Applicant worked from October 2007 until March 2010 as a system support representative for DOD contractor.<sup>1</sup>

Applicant and his wife married in December 2002. They have nine children, two sons and seven daughters, whose ages range between seven months and 14 years. His wife does not work outside the home.<sup>2</sup>

Applicant attended college from January 2006 until March 2009, when he graduated with a Bachelor of Science degree in Information System Security. He worked while he attended school. He financed his education with government and private education loans.<sup>3</sup>

In February 2006, Applicant and his wife purchased a home for approximately \$241,000. They paid a \$70,000 down payment, and they financed the remaining

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<sup>1</sup>GE 1; 23-24, 26-27.

<sup>2</sup>GE 1; Tr. 30-31.

<sup>3</sup>GE 1; Tr. 24-25.

\$171,000 of the purchase price.<sup>4</sup> In September 2006, he obtained a \$10,000 line of credit, and in November 2006, he obtained a home equity line of credit (HELOC) for \$16,000. Applicant refinanced his mortgage in April 2007 for \$224,000. He used the equity from the loan to pay his HELOC, to make improvements in his house; to landscape his yard; and to buy play equipment for his children. In January 2008, he obtained a \$20,000 secured line of credit on his house. His 2013 credit report indicated that the \$21,000 secured line of credit is a paid charged-off account.<sup>5</sup>

In late 2009, Applicant began experiencing difficulties with paying his mortgage. He applied to a home saver program sponsored by the federal government. Through the program, he hoped to bring his mortgage current. The lender approved by the agency, which is the same lender who held his \$224,000 first mortgage and two lines of credit, gave him a \$7,000 loan.<sup>6</sup> The servicing agency was the creditor identified in SOR allegation 1.e (\$7,248). The original lender in SOR allegation 1.g (\$7,249) is the same lender for his primary mortgage and other lines of credit. Applicant believes these debts are the same after much searching. The credit reports provide conflicting information about the source of these debts and the account numbers.<sup>7</sup> The servicing agency (1.e) sold this debt to another lender (1.g) and to a third lender. Applicant has been in contact with the third lender. The lender has offered a lump sum payment of \$2,537. Applicant cannot pay this amount and is paying \$100 a month on this debt.<sup>8</sup>

In his response to the SOR, Applicant indicated that he paid the \$720 (1.a) education debt, the \$600 (1.b) debt, the \$423, now \$1,208, (1.c) education debt, and the \$2,322 bank debt in 2014. His October 2015 credit report indicates that these debts are paid. Applicant paid the \$244 debt in SOR allegation 1.a in August 2015.<sup>9</sup>

The debt in SOR allegation 1.f (\$16,940) relates to a private education debt incurred by Applicant when he was in school. Applicant negotiated a payment plan with the attorney currently collecting this debt. He began paying \$324 a month on this debt

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<sup>4</sup>At the hearing, Applicant estimated that the house cost about \$260,000. He stated that their down payment was \$70,000. Tr. 39-40.

<sup>5</sup>GE 1; GE 2; Tr. 41-44.

<sup>6</sup>A different creditor held his HELOC. See GE 2.

<sup>7</sup>The SOR identified eight purportedly continuing delinquencies as reflected by credit reports from 2013, 2014, and 2015, totaling approximately \$35,000. Some 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.

<sup>8</sup>GE 2 - GE 4; AE C; AE F; AE G; Tr. 20-22, 26-30, 34, 44-45.

<sup>9</sup>Response to SOR; GE 4; AE A; Tr. 17-18.

two years ago. He has paid \$6,336 on his debt. His balance as of November 2013 is \$12,135. The debt continues to accrue interest at the rate of 4.25% a year.<sup>10</sup>

As previously mentioned, Applicant experienced difficulties paying his mortgage. After he lost his job in 2010, he was unable to pay his mortgage on his unemployment income. The mortgage lender (bank) foreclosed on his \$224,000 mortgage loan in 2010. Under state law, Applicant does not owe any money on this debt even if the lender sold the property for less than Applicant owed.<sup>11</sup>

Applicant earned \$6,251 gross income in September 2015, and he received \$3,819 in net income. He received a pay raise in October 2015. His new gross monthly income is \$6,833, and his new net monthly income is \$4,253. Applicant and his family live with his in-laws. He does not pay rent. His monthly expenses include \$365 on a car payment (a second car loan is paid off), \$150 for car insurance, \$520 on gasoline for two cars, \$100 on a storage unit, \$212 on phone, \$20 for Hulu and Netflix, \$100 on credit card, \$140 on entertainment and eating out, \$600 on groceries, \$60 on hair cuts, \$65 on school lunches and supplies, \$200 on clothing, and \$424 on debt payment. His monthly expenses total about \$3,000, leaving approximately \$1,250 for debt payment and unanticipated expenses such as car repairs and medical bills.<sup>12</sup>

Applicant and his wife realized that they were spending too much money and began to cut back on their expenses in 2009. The loss of his job made it more difficult

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<sup>10</sup>AE H; Tr. 22, 51-52.

<sup>11</sup>Under the state anti-deficiency statute, he would not be liable for any unpaid balance of his mortgage loan. The state statute states as follows:

33-729 Purchase money mortgage; limitation of liability

A. Except as provided in subsection B, if a mortgage is given to secure the payment of the balance of the purchase price, or to secure a loan to pay all or part of the purchase price, of a parcel of real property of two and one-half acres or less which is limited to and utilized for either a single one-family or single two-family dwelling, the lien of judgment in an action to foreclose such mortgage shall not extend to any other property of the judgment debtor, nor may general execution be issued against the judgment debtor to enforce such judgment, and if the proceeds of the mortgaged real property sold under special execution are insufficient to satisfy the judgment, the judgment may not otherwise be satisfied out of other property of the judgment debtor, notwithstanding any agreement to the contrary.

B. The balance due on a mortgage foreclosure judgment after sale of the mortgaged property shall constitute a lien against other property of the judgment debtor, general execution may be issued thereon, and the judgment may be otherwise satisfied out of other property of the judgment debtor, if the court determines, after sale upon special execution and upon written application and such notice to the judgment debtor as the court may require, that the sale price was less than the amount of the judgment because of diminution in the value of such real property while such property was in the ownership, possession, or control of the judgment debtor because of voluntary waste committed or permitted by the judgment debtor, not to exceed the amount of diminution in value as determined by the court.

<sup>12</sup>AE C; AE D; Tr. 31-36.

for them to pay their bills for a period of time. Applicant and his wife took a financial counseling course and have applied its principles to their financial management. The 2013 credit report reflects that Applicant paid four collection debts, which are not listed on the SOR. He also paid and closed another 10 to 15 credit accounts, which are not an issue.<sup>13</sup>

## **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

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<sup>13</sup>GE 12; Tr. 36-39.

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 began to develop financial problems in 2009 from overspending. The loss of his job in 2010 seriously impacted his finances. Most of the debts remained unresolved for a time. 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 2010. It took him about seven months to find another job. His unemployment income was insufficient to pay his monthly expenses. Unemployment is a circumstance beyond his control. After he lost his job and the bank foreclosed on his home, Applicant and his family moved into his in-laws' home in 2010 and continue to live there. The move saved the cost of rent and related costs, such as utilities and cable. They also began the slow process of paying their debts. He acted reasonably and responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant and his wife took a financial counseling program and applied the principles they learned to their finances. Applicant pays his monthly expenses and has sufficient income to meet all his current expenses for his large family and to pay his debts. AG ¶ 20(c) applies.

Applicant and his wife recognized by 2009 that they were overspending and started on a self-developed program to pay their debts and reduce their spending. They contacted their creditors. For their larger debts, they developed a payment plan and have complied with their plans. They paid their small debts before the SOR was issued. They acted in good faith<sup>14</sup> when they contacted their creditors and resolved their debts. AG ¶ 20(d) 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

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<sup>14</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigation condition].

(Internal citation and footnote omitted) ISCR Case No.02-30304 at 3 (App. Bd. Apr.20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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 and his wife spent beyond their income. As a result, they began to experience problems paying their mortgage and other bills. By 2009, they understood that they needed to change their spending habits, and they did. They voluntarily developed a plan to pay their debts. Before they could complete their payment goals, Applicant lost his job. Although he received unemployment benefits, his benefits were not sufficient to pay their living expenses. They fell behind in their bill payments. After the bank foreclosed on their house, they and their children moved into her parents' home, where they have lived for the last five years. After Applicant returned to work, they began the slow process of paying their debts. Applicant does not owe any money on his past-due mortgage. He is paying his \$16,000 education loan and has for two years. His other school loans are under an income-based payment plan. At this time, his monthly payment is zero because of his income. He negotiated a payment plan for another large debt, after much effort to determine if he owed the debt. Applicant has established a track record for debt payment over the last few years. He has taken control of his debts and his finances. He has sufficient income to meet his expenses, to pay his debts, and to support his large family. He has acted responsibly towards the debts he incurred over several years. 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 position of trust. His unpaid debts 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
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:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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.

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MARY E. HENRY  
Administrative Judge