



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



In the matter of:)	
)	
)	ISCR Case No. 14-03797
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

01/26/2015

Decision

HENRY, Mary E., Administrative Judge:

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

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on February 21, 2014. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on August 29, 2014, detailing security concerns under Guideline F, financial considerations, and Guideline J, criminal conduct. 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 September 19, 2014, and he answered it the same day. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on November 10, 2014, and I received the case assignment on November 13, 2014. DOHA issued a Notice of Hearing on November 26, 2014, and I convened the hearing as scheduled on December 10, 2014. 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 exhibits (AE) marked as AE A and AE B, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 22, 2014. I held the record open until January 9, 2015, for Applicant to submit additional matters. Applicant timely submitted AE C - AE K, which were received and admitted without objection. The record closed on January 9, 2015.

Procedural Ruling

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 9.)

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. 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 35 years old, works as an ordinance assembler and driver for a DOD contractor. He began his current employment in July 2013. He previously worked as an aluminum welder from August 2012 until July 2013. Applicant is single.¹

Applicant attended an art and design school to learn video game designing. He completed his studies in December 2007, but he does not have his diploma for unknown reasons. Over the next several years, Applicant worked sporadically in his chosen profession. Because of the economic downturn, he was unable to find steady employment in his chosen career. Between January 2008 and August 2012, he worked as a video game designer, in a warehouse, in bicycle design and sales, and at any other jobs he could find. He experienced periods of unemployment and low income.²

¹GE 1; Tr. 19.

²GE 1; GE 4; Tr. 17-21.

Applicant currently earns \$659 a week, plus occasional overtime. His monthly gross income, without overtime, totals \$2,636. His net monthly income, without overtime, totals approximately \$1,900. His monthly expenses include a car payment of \$505, car insurance of \$70, student loan payments of \$189, and food and gasoline for \$400. His total monthly expenses are \$1,164. He has a net remainder of \$736 for unanticipated expenses. He lives with his parents, which eliminates housing costs for him.³

Applicant provided a copy of his unsigned federal and state tax returns for the tax years 2008 and 2010. He also provided a copy of his signed federal and state tax returns for the tax years 2012 and 2013. He did not file a tax return for the tax year 2009 because he was unemployed most of that year. He did not provide a copy of his federal and state tax returns for the tax year 2011. His 2008 tax return reflects an income of \$5,427; his 2010 tax return reflects an income of \$2,823; his 2012 tax return reflects an income of \$20,617, and his 2013 tax return reflects an income of \$38,654. He received a tax refund in 2008, 2012, and 2013.⁴

The SOR identified eight education loans totaling \$34,357 purportedly delinquent, as reflected by the March 6, 2014 credit report. The credit report reflects different account numbers for each debt listed on the credit report. A close review of these accounts shows that the date the account was open and the high balance are the same for four accounts. The difference in account numbers has not been explained. The difference in the amount owed is always higher and can be explained by additional interest and/or penalties added to the debt.⁵

Applicant admitted that he did not pay his education loans after he completed his studies. He did not seek forbearance of his loans. He simply ignored his loans because he did not have enough income to pay his school loans and provide basic needs for himself. When he obtained steady employment with his current employer, he assumed responsibility for his education loans.⁶

In November 2013, two months after beginning his current position, Applicant began looking for a company to help him consolidate his education loans. Company A provided these services to Applicant. Company A worked with the education loan lender on a rehabilitation plan for Applicant's education debts. In November 2013, Applicant began a loan rehabilitation program, which required him to pay \$70 a month for nine months. Applicant completed the rehabilitation program in August 2014. Company A

³AE C; AE E.

⁴AE H - AE I.

⁵SOR; GE 3; GE 4; Tr. 31.

⁶GE 4; Tr. 31-34.

succeeded in persuading the education lender to remove some of the penalties and collection fees on Applicant's debts.⁷

Company A returned Applicant's education loan accounts to the original lender in August 2014. This lender required Applicant to make a monthly payment of \$64 beginning in October 2014. Applicant made two \$64 payments as required. In October 2014, Applicant received a letter advising that Company B would now service Applicant's education loan accounts for the lender. Applicant's monthly payment increased to \$189 a month beginning December 2014. He has made the payments as required.⁸

The eight education debts listed in the SOR are with the same lender. Applicant's documentation and repayment plan list the accounts in SOR allegations 1.b, 1.d, 1.f, and 1.h as the debts owed to the education lender. The amount of the original loan is verified on these documents and coincides with the high credit amount for six loans (¶¶ 1.a-1.f) identified in the March 2014 credit report. The education lender shows a somewhat higher loan balance for the two remaining debts. The lender's statement of account is given substantial weight. I find that the debts in SOR allegations 1.a, 1.c, 1.e, and 1.g are duplicate debts. Applicant's documentation establishes that he currently owes approximately \$16,500 on his education loans, and that he is paying his loans. He does not recognize the \$103 debt in SOR ¶ 1.i as the original insurance company creditor means nothing to him. In his answer, he indicates that he thought this bill was paid, but he did not have any proof. He no longer receives any statements from this creditor.⁹

On March 4, 2011, Applicant joined other individuals at a local bar for a going away party for a mutual friend. During the evening, he drank five or six mixed drinks. He left the bar around 2:00 a.m. with a friend. On his way home, the police stopped him and eventually arrested him for driving under the influence of alcohol (DUI). He spent the night in jail. His breathalyzer tests results indicated a .16% blood-alcohol level. Applicant appeared in court on April 18, 2011. He was found guilty. The court directed him to enroll in a first offender's program, placed him on unsupervised probation for three years, suspended his driver's license for six months, fined him \$1,600 plus other costs totaling \$400, and directed him to perform six days of community service. Applicant complied with the terms of his sentence and paid all his fines. His probation ended in May 2014. He also paid \$500 to retrieve his car from the impound lot.¹⁰

Applicant describes himself as a social drinker. He drinks when he is out with friends, usually consuming two to three beers. He does not get drunk nor does he drink

⁷AE A; AE D; Tr. 31-32.

⁸Response to SOR; AE B.

⁹SOR; Response to SOR; GE 3; AE B; AE D; Tr. 24-25, 35-36.

¹⁰GE 2; GE 4; AE F; Tr. 25-26.

every weekend. If he has consumed too much alcohol, he stays with friends, takes a cab, or does not drive until he is sober.¹¹

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.

¹¹GE 4; Tr. 26-28.

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 did not pay his education loans. The March 2014 credit report indicated that his debts had not been resolved when the SOR was issued. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

When Applicant completed his education to be a video-game designer, he could not find steady employment because the economic downturn of the last decade had begun. Over the next almost five years, Applicant worked sporadically, earning very little income. When he obtained his current employment, he believed he now had a future and undertook to resolve his education loan debt. He located a company, which helped him rehabilitate his education loans. He is now paying his education loans as required. He acted responsibly under the circumstances. AG ¶ 20(b) applies.

The record does not reflect that Applicant has participated in financial or credit counseling; however, his debts and finances are under control. He has sufficient income each month to pay his obligations, including his education loans. Once he had secure employment, he initiated efforts to resume responsibility for his education loans. With the help of Company A, he rehabilitated his education loans and is now paying his educational loan obligations. AG ¶¶ 20(c) and 20(d) apply.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (d) individual is currently on parole or probation.

The police stopped, arrested, and charged Applicant with DUI in March 2011. His arrest was for a serious offense. Applicant completed unsupervised probation in May 2011 before the SOR was issued. A security concern is established under AG ¶¶ 31(a) and 31(c).

The Criminal Conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 32(a) through ¶ 32(d), and the following are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's only DUI arrest occurred almost four years ago. He completed all the requirements of his sentence and is now off probation. He changed his drinking habits after his arrest. He limits the amount of his alcohol consumption to two or three beers when socializing with friends. He will not drive if he has consumed too much alcohol. Instead, he will take a cab home or stay with friends. He will not drive until he is sober. He has matured, and he acts responsibly about his alcohol use. His past DUI does not cast doubt on his reliability, trustworthiness, or good judgment. AG ¶¶ 32(a) and 32(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 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 ignored his responsibility to pay his education loans for a long time. During much of this time, he did not have sufficient income to pay his education loans. When his finances stabilized, he acted to rehabilitate his education loans. He took action more than nine months before the issuance of the SOR and several months before his March 2014 personal subject interview. He has shown a track record for paying the loans over the last 14 months. He has not incurred any other large unpaid debts. He believes he paid the \$103 debt, the only other debt on the SOR. He does not have documentation to support his belief. This debt cannot be a source of pressure or coercion.

Applicant recognizes that his decision to drive after consuming too much alcohol was a poor decision, which he regrets. He complied with all the terms of his sentence, including participating in the first offender’s program. He has changed his attitude and behavior towards the use of alcohol. He has shown that he is responsible about his alcohol use and that he refrains from overindulging in alcohol. He will not drive if he has over indulged in alcohol. This one DUI cannot be a source of duress or coercion.

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 alcohol use under Guidelines F and J.

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
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	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 access to classified information is granted.

MARY E. HENRY
Administrative Judge