



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



In the matter of:)	
)	
)	ISCR Case No. 14-04558
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

06/23/2015

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 August 6, 2012. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on October 10, 2014, 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 October 20, 2014, and he answered it on November 6, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on February 7, 2015, and I received the case assignment on February 23, 2015. DOHA issued a Notice of Hearing on March 9, 2015, and I convened the hearing as scheduled on March 26, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 3, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE D, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on April 3, 2015. I held the record open until April 30, 2015, for Applicant to submit additional matters. Applicant did not submit any additional evidence. The record closed on April 30, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b, 1.i, 1.n, and 1.o of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a, 1.c-1.h, 1.j-1.m, and 1.p-1.s.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 30 years old, works as a data center administrator for a DOD contractor. He began his current employment in January 2012. Applicant began working in information technology about a year earlier. He previously work in sales.²

Applicant graduated from high school in 2003. He received an associate's degree in information technology, and he is currently enrolled in a bachelor's degree networking technology program at a local university.³

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²GE 1; Tr. 24-25.

³GE 1; Tr. 25.

Applicant married his first wife in March 2005 and they divorced in May 2007. They did not have any children. Applicant and his present wife married in July 2008. Applicant has two stepchildren, who are 16 and 11 years of age.⁴

Applicant relates the majority of the SOR debts to his first marriage. His former wife opened many accounts without his knowledge. Since he was young, he did not keep track of their finances and was unaware of the debts created.⁵

The SOR identified 19 purportedly continuing delinquencies as reflected by a credit report from 2012, totaling approximately \$28,200. 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.

The record contains five credit reports. The Government submitted two credit reports dated August 16, 2012 and August 13, 2014.⁶ Applicant submitted three credit reports dated November 6, 2014, January 29, 2015, and March 25, 2015.⁷ The 2012 credit report is the only one that shows all the SOR debts, except for the \$61 medical bill identified in SOR allegation 1.d. Each debt will be addressed and discussed individually.

SOR allegation 1.a identifies a \$3,342 debt that originated with a bank credit card. The bank sold the debt to a creditor who sold the debt to a second creditor. Applicant advised that his former wife bought stereo equipment for a car. The August 2012 and August 2014 credit reports reflect that Applicant disputed this debt. Applicant advised that his dispute resulted in the removal of this debt from his credit report. The November 2014, January 2015, and March 2015 credit reports do not list this debt, which became delinquent in March 2006.⁸

SOR allegation 1.b identifies a \$2,383 debt held by a collection company. The August 2014 and November 2014 credit reports show that Applicant disputed this debt, and that the creditor closed the account. Applicant traced the account to another creditor, then settled and paid the debt for \$600. The January and March 2015 credit reports do not list this debt. The August 2012 credit report lists a \$1,759 debt owed to a financial institution (allegation 1.r), which became delinquent in December 2006. The financial institution closed the account and sold this debt as shown by the November

⁴GE 1; Tr. 24-27.

⁵Tr. 27.

⁶GE 2; GE 3.

⁷Response to SOR; AE B; AE C.

⁸Response to SOR - Credit report dated November 6, 2014; GE 2; GE 1; AE B; AE C; Tr. 27-31.

2014 credit report. Several of the account numbers in both listings are the same. I find that allegations 1.b and 1.r are the same and are resolved.⁹

SOR allegation 1.c concerns a cellular phone past-due account of \$431 listed on the August 2012, August 2014, and November 2014 credit reports, but not on the 2015 credit reports. The November 2014 credit report identifies a collection company as the holder of the debt. In his response, Applicant advised that he does not owe this company any money and that his account is current. At the hearing, he advised that he disputed this debt online. He did not provide supporting documentation.¹⁰

SOR allegations 1.d (\$61) and 1.e (\$197) relate to medical bills. The \$61 debt appears only on the August 2014 credit report.¹¹ The August 2012 and August 2014 credit reports show a zero balance for the \$197 debt. These debts are resolved.¹²

SOR allegation 1.f (\$57) relates to a dispute over the return of a milk box. Applicant disputed this debt, which is listed only on the August 2012 credit report. SOR allegations 1.g (\$312) and 1.h (\$1,024) relate to utility bills listed in his former wife's name. Applicant believed that he disputed these debts, which he believed led to the removal of the debts from his credit report. Neither debt appears on any other credit reports in the record. These debts are resolved.¹³

SOR allegation 1.i (\$1,247) concerns a store credit account. In his response, Applicant advised that he was paying \$100 a month on this debt. The November 2014 credit report shows this debt as paid, and the account closed.¹⁴

SOR allegation 1.j (\$7,499) concerns a bank credit card now held by a collection company. After a careful review of the credit reports, particularly the account numbers, I find that SOR allegation 1.s (\$4,808) is the original creditor and is the same debt based on the same account number and the date of last activity as April 2007. Applicant disputed the debt, which does not appear on any of the other four credit reports of record.¹⁵

⁹Response to SOR; GE 2; GE 3; AE B; AE C; AE D; Tr. 32-33.

¹⁰Response to SOR; GE 2; GE 3; AE B; AE C; Tr. 33.

¹¹At the hearing, the Government indicated its intent not to further pursue Applicant's responsibility for these debts.

¹²GE 2; GE 3; Tr. 34.

¹³Response to SOR; GE 2; GE 3; AE B; AE C; Tr. 35-37.

¹⁴Response to SOR; GE 2.

¹⁵Response to SOR; GE 2; GE 3; AE B; AE C; Tr. 38-39.

SOR allegation 1.k (\$419) concerns a debt held by a collection company for a bill from an apartment complex for damage to a door. The debt became delinquent in August 2012. Applicant indicated that this debt was the same as the \$212 judgment he paid. While this debt appears only on the August 2012 credit report, there is insufficient information to connect the debt and the judgment.¹⁶

SOR allegation 1.l (\$3,009) relates to a credit card, which became delinquent in June 2007. Applicant spoke with the original creditor which indicated it had a zero balance on the account. The August 2012 credit report also shows a zero balance account sold by the original creditor to the current collection company. Applicant disputed this debt, and it was removed from his credit report. SOR allegation 1.m (\$77) relates to a cable modem and a debt that became delinquent in March 2007. Applicant advised that he returned the modem. These debts are listed on the August 2012 credit report, but none of the other credit reports of record.¹⁷

Applicant paid the library debts in SOR allegations 1.n (\$39) and 1.o (\$72). SOR allegation 1.p (\$86) concerns an unpaid medical bill, which is unknown to Applicant. This debt appears only on the August 2012 credit report, which indicates that the debt became delinquent in June 2012. Finally, SOR allegation 1.q (\$2,380) concerns an unpaid loan. The debt has been closed by the original creditor and sold several times. The current owner of the debt is unknown.¹⁸

Applicant provided documentation to show that he paid two medical bills listed on the November 2014, January 2015, and March 2015 credit reports and a bill to a community college. These debts are not listed on the SOR. The creditor holding the medical debts is the same as the creditor holding the debts in SOR allegations 1.g and 1.h.¹⁹

Applicant did not provide a copy of his earnings statement or a budget. He indicated at the hearing that he had between \$500 and \$1,000 a month surplus income.²⁰

The credit reports of record show that about \$26,000 of the SOR debts became delinquent between 2006 and 2008. Most of these debts are not listed on any of the credit reports after August 2012. The reasons for the absence of these debts on more recent credit reports is unknown. The August 2012 credit report shows a paid collection for \$325, and the November 2014 credit report shows a \$212 judgment as paid.

¹⁶GE 2; Tr. 39-40.

¹⁷Response to SOR; GE 2; GE 3; AE B; AE C; Tr. 41-43.

¹⁸Response to SOR; GE 2; GE 3; AE B; AE C; AE D; Tr. 43-44.

¹⁹Response to SOR; AE B; AE C; AE D; Tr. 46-48.

²⁰Tr. 51-52.

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; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems during his brief first marriage because of the spending habits of his first wife. Most of the 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:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The credit reports in the record show that the majority of Applicant's debts occurred during or shortly after his first marriage ended. Most of these debts are earlier than 2009. The remaining debts are small and resolved. Two debts arose because the original creditor did not have a record that equipment had been returned. Because the majority of Applicant's debts relate to his first marriage, which ended in 2007, and Applicant's credit reports reflect that he is and has been managing most of his current debts, his former wife's spending habits and resulting debts are unlikely to recur and do not cast doubt on his current reliability, good judgment, and trustworthiness. AG ¶ 20(a) is partially applicable.

Applicant and his first wife divorced. Applicant has indicated that most of the SOR debts arose because of her spending habits, not as a direct result of their divorce. He disputed one debt before August 2011 and the rest sometime in 2014. AG ¶ 20(b) has some applicability. The record lacks any evidence of credit or financial counseling. However, the 2015 credit reports do not list any of the debts identified in the SOR and most of the debts are not listed on the 2014 credit reports. SOR allegations 1.r and 1.s are duplicate debts and found in favor of Applicant. Based on his recent credit reports, Applicant manages his current finances. AG ¶ 20(c) applies.

Applicant contacted the creditors in SOR allegations 1.b, 1.i, 1.n and 1.o plus three other creditors not listed in the SOR. He arranged to pay these debts and did so. His actions reflect good faith on his part. AG ¶ 20(d) applies to these debts.

Applicant disputed the debts in SOR allegation 1.a, 1.c, 1.f, 1.g, 1.h, 1.j, 1.l, and 1.m on the grounds that the debts were not his. As a result of his disputes, the debts were removed from his credit reports. While he did not provide proof of all disputes, the credit reports reflect several disputed debts, which support his testimony about disputes. AG ¶ 20(e) is partially applicable.

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.

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 married and divorced young. His former wife spent money using various types of credit to pay for what she did not have cash to buy. He did not pay attention to what she was doing. Since his divorce, Applicant's finances have improved, and he better manages his income. He paid those SOR debts he knew he owed. Many debts listed in the SOR have been removed, some as a result of his disputing the debt and others without explanation. Applicant works hard and supports his family. He attends school to improve his skills and future opportunities. Applicant demonstrated that he is responsible and capable of properly managing classified materials.

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

Subparagraphs 1.a-1.s:

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