



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 14-05487 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

05/29/2015

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 March 19, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on November 24, 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, and he answered it on December 22, 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 N, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on April 2, 2015. I held the record open until April 16, 2015, for Applicant to submit additional matters. Applicant timely submitted multiple documents, which were received without objection. On May 12, 2015, he submitted additional documentation beyond the original submission date. Department Counsel did not object to the documents or to reopening the record. The record is reopened and the additional document submissions are received and admitted. The post-hearing documents are marked as AE O - AE HH. The record closed on May 12, 2015.

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 44 years old, works as a network administrative operator for a DOD contractor. He began his current position in October 2012. He started working for his current employer in October 2010 in another DOD contractor position out-of-the-country. He also worked for his employer from March 2005 until July 2009, when he left to move to another state. During this time, Applicant worked out-of-the-country from March 2005 until June 2007. Applicant was unemployed from July 2009 until October 2009, when he accepted a position in configuration management. Applicant was laid off from this job in February 2010.¹

Applicant graduated from high school. He later received an associate's degree in space systems technology and a bachelor's degree in biology. Applicant is divorced. He has a 14-year-old son for whom he pays child support. Applicant served in the United States Air Force on active duty and in the reserves. He received an honorable discharge.²

Applicant filed for bankruptcy in 2003 (SOR allegation 1.I). Prior to his bankruptcy filing, Applicant experienced medical problems related to diabetes, which required at

¹GE 1; Tr. 26.

²GE 1; Tr. 25-26,

least two hospital stays. He incurred significant medical expenses for treatment of his diabetes. During this time, he worked temporary jobs and served in the Air Force reserves. He did not have health insurance from the military or his jobs, and his income was insufficient to pay his medical bills.³

The record contains two credit reports dated March 22, 2013 and June 27, 2014. These reports reflect that Applicant pays many of his accounts "as agreed". The reports also show that Applicant paid or resolved four collection accounts and that after a dispute, he resolved a mortgage debt. The credit reports also identify the debts listed in SOR allegations 1.e through 1.h, which will be discussed below.⁴

The largest SOR collection account (1.e for \$17,822) is for a car, which Applicant voluntarily returned to the creditor. Applicant purchased a new Camaro in March 2011 while in the United States on leave from his out-of-country position. He left the car with friend A. Applicant and friend A agreed that she would keep the Camaro in her garage and, in exchange, she would have use of his 1999 Chevrolet Tahoe. They also agreed that she could drive the Camaro just to keep it operational, that she would obtain insurance if she wanted to drive the Camaro, and that she would maintain the car. During his absence from the United States, friend A drove the Camaro more than agreed and involved the car in at least one accident. Friend A incurred significant expenses related to the Camaro. Friend A and Applicant eventually agreed that friend A would purchase the Camaro with the proceeds from the sale of her house. Friend A never purchased the Camaro nor did she repay the nearly \$10,000 in expenses Applicant incurred because of her use of the car. Applicant retained a lawyer and eventually sued her in court. He obtained a judgment for over \$57,000. Friend A has not paid the judgment. Shortly before the hearing, Applicant offered to settle the judgment for \$37,000 (after learning where she lived and worked) to be paid at the rate of \$400 a month and former friend A agreed. If former friend A fails to comply with these settlement terms, Applicant will garnish her wages. In the meantime, Applicant initiated a payment plan with the creditor in July 2014. He made payments totaling \$1,775 and will continue with payments of \$200 a month. His payment plan is not dependent upon his former friend A's agreement to repay him the judgment.⁵

The remaining three SOR collection debts total \$661. Applicant paid the \$84 debt in allegation 1.g and pays \$15 monthly on the \$246 in allegation 1.h. His remaining balance on this debt, as of March 9, 2015, was \$111. Applicant disputed the \$331 debt with the cell phone carrier in allegation 1.f beginning in January 2011. His efforts to resolve the debt have been unsuccessful.⁶

³GE 2; Tr. 37.

⁴GE 2; GE 3.

⁵GE 2; GE 3; AE C; AE D; AE W; Tr. 27-34.

⁶GE 2; GE 3; AE E - AE G.

The SOR alleges that Applicant failed to file his tax returns for the tax years 2011 through 2013 (allegation 1.a), that Applicant owes \$4,223 on his 2009 federal income taxes (allegation 1.c), and that Applicant owes \$293 on his 2010 federal income taxes (allegation 1.d). Applicant provided tax transcripts from the IRS, which show that he filed his 2008, 2009, and 2010 federal income taxes in 2011. The Internal Revenue Service (IRS) received these tax returns on April 22, 2011 and filed his returns as of June 6, 2011. The tax transcripts reflected that Applicant requested an extension of time in 2008 and that he established an installment agreement for payment of his unpaid taxes in June 2011 for the tax years 2008 and 2009 and in January 2012 for the tax year 2010. The tax transcripts show that he made monthly payments and that he has paid all the taxes owing for these years. The IRS applied part of his tax refund for the tax year 2014 to pay the remaining balance on his 2009 and 2010 taxes.⁷

Applicant mailed his federal income tax documents for the tax year 2011 to the IRS in April 2012, but the IRS returned the documents to him because he had not signed his return. He misplaced the documents, then forgot about filing his return. Applicant mailed his 2011 and 2012 tax returns in 2014, which the IRS received on September 19, 2014 and September 22, 2014, respectively. The IRS processed and filed both returns on October 20, 2014, according to the tax transcripts for these years. Applicant does not owe any additional taxes for the 2011 tax year, but he owes \$96 for the tax year 2012.⁸

Applicant requested an extension of time to file his 2013 federal income tax return. He mailed his 2013 federal tax returns in December 2014, which the IRS received on December 24, 2014. The IRS filed and processed this return on March 9, 2015. The IRS tax transcripts indicate that he owes the IRS approximately \$2,454 in taxes, penalties, interest, and fees for the tax year 2013. Before he filed his tax returns for the 2014 tax year, Applicant and the IRS entered into a payment plan for his unpaid taxes after he contacted the IRS on December 16, 2014. Under the payment plan, Applicant will pay \$100 a month on his tax debt. Applicant timely filed his federal income taxes for the tax year 2014. The IRS applied his refund for the tax year 2014 to past-due taxes.⁹

The tax transcripts and the credit reports of record do not indicate that the IRS filed a tax lien against Applicant or garnished his wages. Applicant denies that his wages were garnished to pay his past-due taxes or that the IRS filed a lien against him. Applicant is working with a financial advisor.¹⁰

⁷GE 1; AE A; AE B; AE K; AE N; AE P - AE R; AE Z; AE AA; Tr. 41-44.

⁸AE K; AE M; AE S; AE T; Tr. 38-40.

⁹AE H; AE I; AE L; AE N; AE U; AE V; AE Z.

¹⁰GE 2; GE 3; AE P - AE V.

The SOR alleges that Applicant did not file his income tax returns with State B for tax years 2012 and 2013. Applicant provided documentation concerning his income tax account with State B. These documents reflect that he owed additional taxes for the tax years 2008, 2009, 2010, and 2013; that he entered into payment agreements with State B; and that he has resolved all his tax debts with State B.¹¹

Applicant currently earns approximately \$5,676 a month in gross income and receives approximately \$3,061 a month in net income after deductions for taxes, social security, medical, insurance, and two loan payments.¹² Applicant's financial statement reflects \$600 of additional income not shown on his earnings statement or otherwise explained.¹³ Applicant's budget reflects monthly expenses totaling \$2,524 including two SOR debt repayments (\$215) and child support (\$400), but not including food and miscellaneous expenses or his \$100 a month tax payment to the IRS. His income covers his expenses.¹⁴

Applicant submitted eight letters of recommendation. Five indicated knowledge of his financial issues. All speak highly of Applicant as a person and individual. His coworkers and supervisors describe him as extremely knowledgeable in his job and a hard worker. They consider him ethical and trustworthy. His friends describe him as loyal and trustworthy. All recommend him for a security clearance.¹⁵

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,

¹¹AE J; AE DD - AE HH.

¹²For tax withholding purposes, Applicant claims zero exemptions as a single person for both federal and state taxes. AE Y.

¹³This may include the \$400 monthly payment from friend A.

¹⁴AE X; AE Y.

¹⁵AE I; AE O.

reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant developed financial problems after he left his car in the care of friend A in 2011, creating a substantial unpaid car debt. He failed to file his federal and state income tax returns on time for many years. These 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;
- (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.

Applicant was unemployed for three months in 2009, then laid-off in early 2010. He immediately found new employment in 2010 and does not claim that his three months of unemployment created financial problems for him. In 2011, Applicant and friend A agreed that she would keep his new Camaro in a garage for him and in exchange, she could drive his older Tahoe. She was authorized limited use of the Camaro. She did not comply with the terms of the agreement. Instead, she drove the Camaro more than authorized and incurred damages and other expenses as a result. Her actions were largely beyond Applicant's control, particularly since he was working out-of-the-country. Applicant acted reasonably about this situation because he retained an attorney to help him recover his expenses and file a lawsuit against friend A. He is now attempting to recover the judgment awarded to him since he knows where friend A works and lives. Independently of friend A's obligation, he has a payment plan to resolve the debt on the Camaro. AG ¶¶ 20(b) applies only to SOR allegation 1.e.

Applicant is working with a financial advisor on managing his income and expenses. He developed a reasonable budget that addresses his current expenses and includes his payment plans. He has addressed the debts in the SOR, and he taken control of his finances. Before the issuance of the SOR, he contacted the creditors for his largest debt and one small debt. He developed a manageable payment plan with both and has complied with the agreed upon terms. In 2011, he worked out his first payment plan with the IRS. He again contacted the IRS in late 2014 and developed a new payment plan for his remaining tax debt. He has made good faith effort to resolve his debts. AG ¶¶ 20(c) and 20(d) apply.

Applicant disputed the \$331 cell phone beginning in 2011 because he did not ask for or use the service for which he was billed because he lived out-of-the-country. He had a reasonable basis to dispute the debt, which he has been unable to resolve. AG ¶ 20(e) applies to SOR allegation 1.f only.

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. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F. The evidence of record reflects a pattern of filing his federal and state income tax returns late, which shows a lack of responsibility and failure to comply with his obligations as a United States citizen. To his credit, Applicant eventually filed his federal and state income tax returns prior to the IRS seeking to recover the taxes owed through liens and garnishments. Once he filed his returns, he twice developed payment plans for any unpaid taxes and the penalties, fees, and interest owed. He has resolved the past due state taxes identified in the SOR, and he has a payment plan for the remaining monies owed to the IRS. In taking action on his debts. Applicant’s largest debt relates to the Camaro and the unusual circumstances under which it arose. He took action to recover the costs incurred because of the actions of friend A and has an agreement for her to pay him the money owed. On his own initiative, he developed payment plans for two SOR debts and paid the smallest debt. The credit reports reflect that he has a history and track record for debt payment. Applicant has not ignored his obligations. His supervisors and coworkers are aware of his financial problems. None of them believe that Applicant will compromise classified information because of his financial issues. Rather, they consider him highly trustworthy based on his work ethics and conduct. Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. Applicant has mitigated the security concerns about his finances under Guideline F.

