



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



In the matter of:)	
)	
)	ISCR Case No. 12-07832
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

December 4, 2014

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 6, 2012. On May 7, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on May 19, 2014. He answered the SOR in writing (Answer) on May 27, 2014, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on July 31, 2014. Applicant submitted no response to the FORM. The case was assigned to me on November 3, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer, Applicant admitted the factual allegations in Paragraphs 1.b., 1.d., and 1.k. of the SOR, with very little explanations. He denied the factual allegations in Paragraphs 1.a., 1.c., and 1.e.~1.j. of the SOR.

Guideline F - Financial Considerations

Applicant is a 39 year old naturalized U.S. citizen born in Morocco. (Item 5 at pages 5~9.) It is unclear what has exactly caused his current financial difficulties; but in his February 2014 Response to DOHA Interrogatories, Applicant avers he is “currently receiving unemployment benefits,” and that he is experiencing a “current financial hardship.” (Item 6 at pages marked 3 and 5.)

1.a. Applicant denies, without any explanation, that he is indebted to Creditor A in the amount of about \$57. As this debt appears on the Government’s most recent April 2014 credit report, I find that it is still past due. (Item 8 at page 1.)

1.b. Applicant admits, without any explanation, that he is indebted to Creditor B in the amount of about \$765. I find that it is still past-due.

1.c. Applicant denies, without any explanation, that he is indebted to Creditor C in the amount of about \$357. As this debt appears on the Government’s most recent April 2014 credit report, I find that it is still past due. (Item 8 at page 1.)

1.d. Applicant admits that he is indebted to Creditor D, as the result of a real estate short sale, in the amount of about \$54,712. He has also provided supporting documentation in his Answer. (Answer at pages 5~11.) I find that it is still past due.

1.e. Applicant denies, with an explanation, that he is indebted to Creditor E in the amount of about \$352. He has also provided, in his Answer, a letter from this creditor showing it “has been paid in full.” (Answer at page 4.) I find that this debt is not past due.

1.f. Applicant denies, with little explanation, that he is indebted to Creditor F in the amount of about \$297. As this debt appears on the Government’s April 2012 credit report, I find that it is still past due. (Item 7 at page 9.)

1.g. Applicant denies, without any explanation, that he is indebted to Creditor G in the amount of about \$192. As this debt appears on the Government’s April 2012 credit report, I find that it is still past due. (Item 7 at page 9.)

1.h. Applicant denies, without any explanation, that he is indebted to Creditor H in the amount of about \$214. As this debt appears on the Government’s April 2012 credit report, I find that it is still past due. (Item 7 at page 9.)

1.i. Applicant denies, with little explanation, that he is indebted to Creditor I in the amount of about \$53. He avers it “was paid,” and refers to his February 2014 Response to DOHA Interrogatories. As this Response sheds little light on this matter, and as this

debt does appear on the Government's April 2012 credit report, I find that it is still past due. (Item 7 at page 13.)

1.j. Applicant denies, without any explanation, that he is indebted to Creditor J in the amount of about \$26. As this debt appears on the Government's April 2012 credit report, I find that it is still past due. (Item 7 at page 13.)

1.k. Applicant admits, without any explanation, that he is indebted to Creditor K in the amount of about \$2,621. I find that it is still past due.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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. (AG Paragraph 2.) The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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 Paragraph 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to 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 the 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 Paragraph 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.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 19(a), an “*inability or unwillingness to satisfy debts*” is potentially disqualifying. Similarly under Subparagraph 19(c), “*a history of not meeting financial obligations*” may raise security concerns. Applicant has significant past-due debts, which he has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant attributes his past-due debts to being currently unemployed, he has failed to provide anything showing he has acted “*responsibly under the circumstances*,” as required by Subparagraph 20(b). Furthermore, Subparagraph 20(d) requires that “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.” Applicant has yet to address debts totaling in excess of \$59,000. Accordingly, Applicant has not met his burden of persuasion. Once he does address these debts, he may again apply for a security clearance.

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 the Applicant’s conduct and all the circumstances. Under AG Paragraph 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 Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Applicant has submitted nothing since his simple Answer, and the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. Applicant has over \$59,000 in past-due indebtedness that he has yet to address. For these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept arising from his Financial Considerations.

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:	AGAINST APPLICANT
Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	Against Applicant
Subparagraph 1.k.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge