



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



In the matter of:)	
)	
)	ISCR Case No. 12-08254
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

June 11, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 27, 2012. On December 11, 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 answered the SOR in writing on January 8, 2015, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on March 2, 2015. DOHA issued a notice of hearing on March 5, 2015, and I convened the hearing as scheduled on April 13, 2015. The Government offered Exhibits (GXs) 1 through 6, which were received without objection. Applicant testified on his own behalf

and submitted Exhibits (AppXs) A through C, which were received without objection. DOHA received the transcript of the hearing (TR) on April 21, 2015. I granted Applicant's request to keep the record open until May 13, 2015, to submit additional matters. On May 13, 2015, he submitted AppXs D and E, which were received without objection. The record closed on May 15, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in Subparagraphs 1.c., 1.d., 1.h., 1.i., 1.p., 1.r., 1.s., and 1.u.~1.y. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.a., 1.b., 1.e.~1.g., 1.j.~1.o., 1.q., 1.t., and 1.z. of the SOR.

Guideline F- Financial Considerations

Applicant is a 50 year-old divorcee, who is responsible for the child support of five minor children. (TR at page 21 line 10 to 22 line 2, and at page 30 lines 6~21.) This, coupled with the failure of his limousine business in 2008, has caused Applicant's current financial difficulties. (TR at page 24 line 21 to page 25 line 16.)

1.a. and 1.b. It is alleged that Applicant is indebted to Creditor A, as the result of two outstanding judgments, in an amount totaling about \$2,599. (GX 4 at page 2.) Applicant does not recall these judgments. (TR at page 29 line 22 to page 30 line 5.) In 2012, he avers he "contacted a debt consolidator," but he has not "gotten a response." As these judgments appear on the Government's March 2014 Credit Report (CR), I find they are still outstanding.

1.c. Applicant admits that he is indebted to Creditor C for a past-due debt in the amount of about \$300. (TR at page 34 line 11 to page 35 line 11.) He has contacted this creditor, and has paid \$25 towards this debt as evidenced by a bank statement. (AppX E.) He avers in his written closing statement that he will pay the remaining \$290 in June 2015. I find that Applicant is making a good-faith effort to address this debt.

1.d. Although Applicant initially admitted an alleged past-due debt to Creditor D in the amount of about \$1,103, he now disputes this "cable television" debt. (TR at page 35 line 12 to page 36 line 8, and GX 4 at page 2.) As he has not done anything vis-a-vis this debt since "right around 2012"; and as it appears on the Government's March 2014 CR, I find it is still outstanding.

1.e. and 1.f. These appear to be one and the same debt to Creditor E. (TR at page 36 line 9 to page 37 line 17.) Although Applicant initially denied this alleged past-due debt to Creditor E in the amount of \$1,133.73; he has now settled this debt for \$453.59 and has made an initial payment of \$53.49, as evidenced by a "Settlement" letter from a successor creditor to this debt. (AppX D.) I find that Applicant is making a good-faith effort to address this debt.

1.g. It is alleged that Applicant is indebted to Creditor G, as the result of a vehicle repossession, in the amount of about \$10,345. (GX 4 at page 2.) He has done nothing vis-a-vis this debt since he turned the vehicle “back to the dealership” in 2012. (TR at page 37 line 18 to page 39 line 13.) As it also appears on the Government’s March 2014 CR, I find it is still outstanding.

1.h. Applicant admits that he is indebted to Creditor H in the amount of about \$548. (TR at page 39 line 14 to page 40 line 5.) As he has not contacted this creditor since 2012, I find it is still outstanding. (*Id.*)

1.i. Applicant admits that he is indebted to Creditor I in the amount of about \$914. (TR at page 40 line 7 to page 41 line 1.) As he has also not contacted this creditor since 2012, I find it is still outstanding. (*Id.*)

1.j. It is alleged that Applicant is indebted to Creditor J in the amount of about \$666. (GX 3 at page 3.) He avers that this credit card debt is his “ex’s account.” (TR at page 41 lines 3~20.) As he has done nothing vis-a-vis this debt; and as it also appears on the Government’s March 2012 CR, I find it is still outstanding.

1.k.~1.n. Applicant denies that he is past due in his student loans to Creditor K in an amount totaling about \$3,892. He avers that as he is still in school, these loans are deferred. (TR at page 41 line 21 to page 44 line 12.) This contention is also supported by the Government’s most recent April 2015 CR. (GX 6 at pages 2~7.) I find these student loan debts are not past due.

1.o. It is alleged that Applicant is indebted to Creditor O in the amount of about \$757. (GX 3 at page 12.) He avers that he “closed that account.” (TR at page 44 line 13 to page 45 line 3.) As he has done nothing vis-a-vis this debt; and as it also appears on the Government’s March 2012 CR, I find it is still outstanding.

1.p. Applicant admits that he is indebted to Creditor P in the amount of about \$30,685. (TR at page 45 line 5 to page 46 line 10.) This past-due debt is for a limousine he turned back in to the dealership in 2012. As he has also not contacted this creditor since 2012, I find it is still outstanding. (*Id.*)

1.q. It is alleged that Applicant is indebted to Creditor Q in the amount of about \$5,196. (GX 3 at page 12.) He avers that this debt may be his ex wife’s account. (TR at page 46 lines 11~23.) As he has done nothing vis-a-vis this debt; and as it also appears on the Government’s March 2012 CR, I find it is still outstanding.

1.r. and 1.s. Applicant admits that he is indebted to Creditor R, for two credit cards, totaling in the amount of about \$1,683. (TR at page 46 line 24 to page 47 line 25.) As he has also not contacted this creditor, I find they are still outstanding. (*Id.*)

1.t. It is alleged that Applicant is indebted to Creditor T in the amount of about \$904. (GX 3 at page 13.) He avers that this debt may be his ex wife’s account. (TR at

page 48 lines 1~9.) As he has done nothing vis-a-vis this debt; and as it also appears on the Government's March 2012 CR, I find it is still outstanding.

1.u. Applicant admits that he is indebted to Creditor U in the amount of about \$2,157. (TR at page 48 lines 10~17.) As he has not contacted this creditor, I find it is still outstanding. (*Id.*)

1.v. Applicant admits that he is indebted to Creditor V in the amount of about \$1,131. (TR at page 48 line 18 to page 49 line 2.) As he has also not contacted this creditor, I find it is still outstanding. (*Id.*)

1.w. Applicant admits that he is indebted to Creditor W in the amount of about \$2,402. (TR at page 49 lines 3~13.) As he has not contacted this creditor, I find it is still outstanding. (*Id.*)

1.x. and 1.y. Applicant admits that he is indebted to Creditor X, for two credit cards, totaling an the amount of about \$2,741. (TR at page 49 lines 14~24.) As he has also not contacted this creditor, I find they are still outstanding. (*Id.*)

1.z. It is alleged that Applicant is indebted to Creditor Z in the amount of about \$81. (GX 3 at page 20.) He avers that this debt may be his. (TR at page 49 line 25 to page 50 line 14.) As he has done nothing vis-a-vis this debt; and as it also appears on the Government's March 2012 CR, I find it is still outstanding.

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 much of his past-due debts to his divorce and failed limo business, he has failed to act “*responsibly under the circumstances*,” as required by Subparagraph 20(b) with respect to his debts. Furthermore, Subparagraph 20(d) requires that “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.” His student loans are deferred, but other than 1.c., 1.e. and 1.f.; despite being given a month to do so, Applicant has yet to credibly address his past-due debts totaling about \$64,000. Accordingly, Applicant has not met his burden of persuasion.

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 is well thought of in the work place. (AppX B.) However, the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. Applicant has about \$64,000 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.	For Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	Against Applicant
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	For Applicant
Subparagraph 1.n.	For Applicant
Subparagraph 1.o.	Against Applicant
Subparagraph 1.p.	Against Applicant
Subparagraph 1.q.	Against Applicant
Subparagraph 1.r.	Against Applicant
Subparagraph 1.s.	Against Applicant
Subparagraph 1.t.	Against Applicant

Subparagraph 1.u.	Against Applicant
Subparagraph 1.v.	Against Applicant
Subparagraph 1.w.	Against Applicant
Subparagraph 1.x.	Against Applicant
Subparagraph 1.y.	Against Applicant
Subparagraph 1.z.	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