



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-11202
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Strzelczyk, Esquire, Department Counsel
For Applicant: *Pro se*

June 21, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 17, 2012. On June 10, 2015, 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, without submitting any supporting documentation, on August 7, 2015, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on September 8, 2015. Applicant responded to the FORM (Response), with only written argument, on October 26, 2015. Department Counsel had no objection. The case was assigned to me on January 19, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in Paragraphs 1.a., 1.b., and 1.d.~1.k. of the SOR, with only explanations, and no supporting documentation. He denied the factual allegation in Paragraph 1.c. the SOR, again with only explanation.

Applicant is a 54-year-old employee of a federal contractor. (Item 2 at pages 5 and 11.) He seeks a security clearance in conjunction with his position as a “Multi Discipline System” engineer, and has been so employed since 1984. (Item 2 at page 11.)

1.j. and 1.k.¹ In December of 2007 and again in December of 2010, Applicant admits misusing his company issued credit card, although he avers that allegation 1.j. only involved a \$10 clerical error. The Government does not dispute Applicant’s explanation as to the 2010 alleged misuse; and as such, allegation 1.j. is found for Applicant. However, allegation 1.k. is found against Applicant.

1.i. Applicant admits that he is indebted to the Federal Government for delinquent taxes in the amount of about \$4,338 for tax year 2009. He avers that he is “currently on a monthly payment plan to pay” this debt, but has offered nothing in support of his bare averment. This allegation is found against Applicant.

1.g. Applicant admits that his 2009 Chapter 13 Bankruptcy was dismissed in 2010. He disputes that he had a late trustee payment, but has offered nothing in support of his bare averment. This allegation is found against Applicant.

1.f. Applicant admits that his 2010 Chapter 13 Bankruptcy was dismissed in 2012. He attributes this dismissal to the malfeasance of his bankruptcy attorney, but has offered nothing in support of this bare averment. This allegation is found against Applicant.

1.h. Applicant admits that his wages were garnished in 2012, in the amount of about \$380, to pay delinquent state taxes. This state tax debt is paid; and as such, this allegation is found for Applicant.

1.b.~1.e. Applicant filed for the protection of another Chapter 13 Bankruptcy in August of 2015. This is evidenced by that bankruptcy petition. (Item 8, the first three pages.) This petition was approved, and Applicant was ordered to make monthly trustee payments of \$3,863 beginning in September of 2015. (Item 8 at page 13.) While this approved petition appears to cover those past-due debts alleged in subparagraphs 1.b.~1.e., Applicant has submitted nothing other than his bare averment that he is making these payments. This averment is suspect, at best, in light of Applicant’s two prior failed Chapter 13 Bankruptcies. These allegations are found against Applicant.

¹The allegations will be discussed chronologically, and not as they appear on the SOR.

1.a. Applicant admits that he is indebted to Creditor A in the amount of about \$3,238. As he has offered nothing further of substance in this regard, other the general bare averments in his Response, this allegation is found against Applicant.

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 AG 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 debt, which he has failed to demonstrate he has resolved. I can find no countervailing Mitigating Condition that is applicable here. Financial Considerations are found against Applicant.

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. The record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. Applicant has failed to fully respond to the Government's concerns; and as such, has failed to address the alleged past-due debts. For this reason, 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
Subparagraphs 1.a.~1.g.	Against Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	For 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