



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



In the matter of:)	
)	
)	ISCR Case No. 14-02856
)	
)	
Applicant for Security Clearance)	

Appearances

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

March 16, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 22, 2013. On July 23, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 August 8, 2014. He answered the SOR in writing on August 21, 2014, 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 December 8, 2014. DOHA issued a notice of hearing on December 10, 2014, and I convened the hearing as scheduled on January 22, 2015. The Government offered Exhibits (GXs) 1 through

6, which were received without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on January 30, 2015. I granted Applicant's request to keep the record open until February 23, 2015, to submit additional matters. On February 23, 2015, he submitted a Closing Statement, but no exhibits. The record closed on February 23, 2014. 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 denied the factual allegations in all the Subparagraphs of the SOR.

Guideline F - Financial Considerations

Applicant is a 45 year-old former Marine, who works for a Government contractor. (TR at page 21 line 20 to page 28 line 25.)

1.a. It is alleged that Applicant is indebted to Creditor A for a past-due debt in the amount of about \$54. (GX 6 at page 1.) He claims he is "in good standing with them," but it appears as "UNPAID" on the Government's most recent, January 2015 Credit Report. (TR at page 29 line 17 to page 30 line 14, and GX 6 at page 1.) As Applicant has submitted nothing in this regard, other than his bare averment, I find that this debt is past due.

1.b. It is alleged that Applicant is indebted to Creditor B for a past-due debt in the amount of about \$714. (GX 6 at page 1.) He now admits this debt, and it also appears as "UNPAID" on the Government's most recent, January 2015 Credit Report. (TR at page 30 line 15 to page 31 line 3, and GX 6 at page 1.) I find that this debt is past due.

1.c. It is alleged that Applicant is indebted to Creditor C for a past-due debt in the amount of about \$5,506. (GX 3 at page 5.) This debt is the result of Applicant's truck being repossessed. (TR at page 31 line 4 to page 33 line 2.) He avers that the creditor never tried to contact Applicant, and visa versa. (*Id.*) However, as it appears as a "CHARGE OFF" on the Government's March 2013 Credit Report; and as Applicant has submitted nothing in this regard, I find that this debt is past due.

1.d. It is alleged that Applicant is indebted to Creditor D for a past-due debt in the amount of about \$6,918. (GX 3 at page 8.) This debt is the result of Applicant living in an apartment for seven years (TR at page 33 line 3 to page 35 line 13.) He avers that this was just normal wear and tear of the apartment. (*Id.*) However, as it appears as a "Collection" account on the Government's March 2013 Credit Report; and as Applicant has submitted nothing in this regard, I find that this debt is past due.

1.e. It is alleged that Applicant is indebted to Creditor E for a past-due debt in the amount of about \$674. (GX 3 at page 8.) He avers that he "paid" this debt. (TR at

page 35 line 13 to page 36 line 12.) However, as it still appears as a “Collection” account on the Government’s March 2013 Credit Report; and as Applicant has submitted nothing in this regard, I find that this debt is past due.

1.f. It is alleged that Applicant is indebted to Creditor F for a past-due debt in the amount of about \$345. (GX 3 at page 9.) He avers that he “totally forgot about” this debt. (TR at page 36 line 13 to page 37 line 2.) As it still appears as a “Collection” account on the Government’s March 2013 Credit Report; and as Applicant has submitted nothing in this regard, I find that this debt is past due.

1.g., 1.i. and 1.j. It is alleged that Applicant is indebted to Creditor G for three past-due medical debts in an amount totaling about \$397. (GX 3 at pages 9 and 10.) He avers that he “could have sworn . . . [he] paid . . . all . . . [his] co-pays.” (TR at page 37 lines 3~19.) As they still appear as “Collection” accounts on the Government’s March 2013 Credit Report; and as Applicant has submitted nothing in this regard, I find that these debts are past due.

1.h. It is alleged that Applicant is indebted to Creditor J for a past-due debt in the amount of about \$163. (GX 3 at page 9.) As it still appears as a “Collection” account on the Government’s March 2013 Credit Report; and as Applicant has submitted nothing in this regard, I find that this debt is past due.

Guideline E - Personal Conduct

2.a. Applicant answered “No” to “**Section 26: Financial Record: Delinquency Involving Routine Accounts . . . In the past seven (7) years,**” on his February 22, 2013 e-QIP, as “property . . . repossessed,” debts “turned over to a collection agency, and debts “charged off.” (GX 1 at page 41.) He avers, in part, that he “didn’t have all the information they wanted for any credit.” (TR at page 37 line 24 to page 38 line 21.) I find this to be a wilful falsification.

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. 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. Paragraph 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. 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 that he has yet to address. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Subparagraph 20(d) applies where the evidence shows *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Applicant has failed to submit any documentation showing that he has made a good-faith effort to address his significant past-due debts. I can find no other countervailing Mitigating Condition that is applicable here. Financial Considerations are found against the Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 15: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”

The following Disqualifying Condition under Subparagraph 16(a) applies. It provides that the *“deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . .”* may be disqualifying. I can find no countervailing Mitigating Condition here, as the Applicant could have easily answered his e-QIP honestly, which he certified as “true, complete, and correct.” Personal Conduct is found against the 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 or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from his Financial Considerations, and Personal Conduct.

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.j.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	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