



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



In the matter of:)	
)	
)	ISCR Case No. 14-02972
)	
)	
Applicant for Security Clearance)	

Appearances

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

May 22, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 10, 2013. On September 5, 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 September 11, 2014. He answered the SOR in writing on October 1, 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 March 4, 2015. DOHA issued a notice of hearing the next day on, March 5, 2015, and I convened the hearing as scheduled on April 9, 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 April 17, 2015. I granted Applicant's request to keep the record open until May 8, 2015, to submit additional matters. On May 8, 2015, he submitted Exhibits (AppXs) A, B, D and E (he alluded to an Exhibit C, but no Exhibit C was submitted), which were received without objection. The record closed on May 8, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations.

Guideline F - Financial Considerations

Applicant is a 44 year-old aircraft electrician working for a defense contractor. (GX 1 at page 5, and TR at page 21 lines 2~23.) His past-due indebtedness is attributed to a 2012 divorce. (TR at page 21 line 24 to page 24 line 1.) Applicant has addressed the Government's concerns; which will be discussed at length, and currently has "\$48,000" in the bank. (TR at page 37 line 1~14.)

1.a. It is alleged that Applicant is indebted to Creditor A for a past-due debt in the amount of about \$10,599. He settled this debt for \$7,565, and has paid said amount. (TR at page 24 line 2 to page 26 line 3.) This is evidenced by a letter from Creditor A's collection agency showing a current balance of "\$0.00." (AppX A.) I find for Applicant as to this allegation.

1.b. It is alleged that Applicant is indebted to Creditor B for a past-due mortgage debt in the amount of about \$4,737. He is current with his mortgage. (TR at page 26 line 25 to page 29 line 23.) This is evidenced by a letter from Creditor B showing nothing is past due, and by the Government's most recent April 2015 credit report showing "\$0" is past due. (AppX B, and GX 6 at page 2.) I find for Applicant as to this allegation.

1.c. It is alleged that Applicant is indebted to Creditor C for a past-due debt in the amount of about \$27. He testified that he has paid this very small debt, which does not appear on the Government's most recent April 2015 credit report. (TR at page 29 line 24 to page 30 line 21, and GX 6.) I find for Applicant as to this allegation.

1.d. It is alleged that Applicant failed to file and/or pay his Federal income taxes for tax year 2011. He admits that he simply forgot to mail this return, which he had prepared. (TR at page 30 line 24 to page 33 line 9.) Applicant filed this return in October of 2014, as evidenced by said return and a cancelled check. (AppX D.) I find for Applicant as to this allegation.

1.e. It is alleged that Applicant failed to file and/or pay his state income taxes for tax year 2011. He again admits that he simply forgot to mail this return, which he had prepared. (TR at page 30 line 24 to page 33 line 9.) Applicant filed this return in October of 2014, as evidenced by said return. (AppX E.) I find for Applicant as to this allegation.

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. Under Subparagraph 19(g) *“failure to file annual Federal, state . . . income tax returns as required”* may also raise security concerns. Applicant has had difficulty meeting his financial obligations. However, I find two countervailing Mitigating Conditions that are applicable here. Under Subparagraph 20 (b), it may be mitigating where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. . . . divorce or separation), and the individual acted responsibly under the circumstances.”* Applicant’s past-due indebtedness is directly attributed to his divorce. Under Subparagraph 20 (d), it may also be mitigating where *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Applicant has paid his past-due debts, and has filed his income tax returns and paid those taxes that were due.

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of Applicant’s conduct and all the circumstances. Under 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 without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant has mitigated the security concerns arising from his Financial Considerations, under the whole-person concept.

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:	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge