



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



In the matter of:)	
)	
)	ISCR Case No. 14-00426
)	
)	
Applicant for Security Clearance)	

Appearances

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

February 26, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 17, 2013. On April 16, 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 April 29, 2014. He answered the SOR in writing (Answer) on May 2, 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 October 21, 2014. DOHA issued a notice of hearing on October 23, 2014, and I convened the hearing as scheduled on November 24, 2014. The Government offered Exhibits (GXs) 1 through

4, which were received without objection. Applicant testified on his own behalf, as did his wife, and submitted Exhibit (AppX) A, which was received without objection. DOHA received the transcript of the hearing (TR) on December 4, 2014. I granted Applicant's request to keep the record open until December 24, 2014, to submit additional matters. On or about December 11, 2014, he submitted Exhibit B, which was also received without objection. The record closed on December 24, 2014. 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. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

Applicant has worked for his current employer for "22 years," without ever violating his employer's rules or policies. (TR at page 21 line 23 to page 22 line 8.) He has held a security clearance for 11 of those 22 years, and has never had a security clearance violation. (TR at page 22 lines 9~12.) However, as the result of a March 2010 divorce, Applicant was unable pay his debts in a timely fashion. (TR at page 29 lines 15~23, and GX 1 at page 15.) In 2014, he engaged the services of a debt consolidation company to address his past due indebtedness. (TR at page 33 line 23 to page 36 line 15, and Answer at pages 5~23.)

1.a. Applicant admits that he was indebted to Creditor A for a past-due debt in the amount of about \$8,945. Through the services of his debt consolidation company, this debt was settled for \$4,472, as evidenced by correspondence from that company. (TR at page 22 line 13 to page 25 line 23, and AppX A at page 15.) He is making payments on the settlement agreement as evidenced by his banking records. (AppX A at pages 19~21.)

1.b. Applicant admits that he was indebted to Creditor B for a past-due debt in the amount of about \$2,903. Through the services of his debt consolidation company, this debt was settled for \$1,590, as evidenced by correspondence from that company. (TR at page 25 line 24 to page 29 line 3, at page 34 lines 1~9, and AppX A at page 16.) He paid this settled debt as evidenced by his banking records. (AppX A at pages 17~28.)

1.c. Applicant admits that he is indebted to Creditor C for a past-due debt in the amount of about \$11,219. He is negotiating a settlement of this debt through the services of his debt consolidation company. (TR at page 30 line 2 to page 32 line 11, and at page 33 line 23 to page 34 line 3.)

Guideline E - Personal Conduct

2.a. Applicant answered “No” to “**Section 26 - Financial Record . . . Delinquency Involving Routine Accounts.**” By doing so, he failed to disclose the three delinquencies admitted, above. In his Answer and at his hearing, Applicant has repeatedly averred that this “error” was a “mistake” on his part, but it was not an intentional falsification. (TR at page 36 line 16 to page 39 line 10, and at page 40 line 17 to page 41 line 1.) He avers he had no intention of deceiving the Government. (*Id.*) His trustworthiness and credibility in this regard is supported by 11 letters of recommendation. (AppX B.) Furthermore, I closely observed Applicant during his hearing, and found him to be honest in his testimony. I find no wilful falsification here.

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 had significant past-due indebtedness. 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(b) applies where “*the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. . . . divorce . . .), and the individual acted responsibly under the circumstances.*” Applicant’s past-due debts are directly attributable to his 2010 divorce. Subparagraph 20(c) applies where “*there are clear indications that the problem is being resolved or is under control.*” Applicant has engaged the services of a debt consolidation company to address his debts which it has been doing. 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 settled and paid one debt. He has settled and is paying a second debt. Finally, he is making a good-faith effort to address the remaining debt. Financial Considerations are found for 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.”

Disqualifying Condition Subparagraph 16(a) applies where there is a “*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . .*” I find no wilful falsification here. Applicant did not intentionally falsify his e-QIP.

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. Those who know Applicant in the workplace speak most highly of him. (AppX A.) The record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has mitigated the security concerns arising from his alleged Financial Consideration 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: FOR APPLICANT

Subparagraphs 1.a.~1.c. For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a. : For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge