



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



In the matter of:)	
)	
)	ISCR Case No. 14-00427
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

March 11, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 27th, 2013. On April 8, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, E and J 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 July 15, 2014, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on September 11, 2014. Applicant did not respond to the FORM. The case was assigned to me on February 10, 2015. 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, dated July 15, 2014, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations.

Applicant is a 40 year old employee of a defense contractor. (Item 4 at pages 5 and 12.)

Guideline F - Financial Considerations

1.a.-1.f, 1.h. and 1.i. Applicant admits that he is indebted to eight creditors in an amount totaling in excess of \$29,000. As he has offered nothing further in this regard, I find that these are past due.

1.g. Applicant avers that he believes he "paid" this past-due debt to Creditor G for \$223, "2 months ago," in May of 2014. (Answer at page 2.) However, as he has offered nothing further in this regard, I also find that this debt is past due.

Guideline E - Personal Conduct

2.a. Applicant admits that he falsified his August 2013 e-QIP when he answered "No" to "**Section 26: Financial Record: Delinquency Involving Routine Accounts,**" thereby denying any delinquencies "in the past seven (7) years. I find this to be a knowing and wilful falsification.

Guideline J - Criminal Conduct

3.a. In May of 1989, Applicant was arrested for and charged with one count of Selling Marijuana. (Item 6 at page 2.)

3.b. In October of 2006, Applicant was arrested for, and subsequently pled guilty to, one count of Driving Under the Influence of Alcohol or Drugs. (Item 6 at page 2, and Item 7 at page 2.) As a result, he was fined \$4,500 and placed on probation for five years. (*Id.*)

3.c. In November of 2011, Applicant was again arrested for, and subsequently pled guilty to, one count of Driving Under the Influence of Alcohol or Drugs. (Item 6 at page 2, and Item 7 at page 2.) As a result of this second conviction, he was fined \$5,000, sentenced to 15 days in jail, and placed on probation for five years. (*Id.*) Applicant is still on probation as a result of this conviction.

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.

Guideline J - Criminal Conduct

Paragraph 30 of the adjudicative guidelines sets out the security concern relating to Criminal Conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

The adjudicative guidelines set out certain conditions that could raise security concerns. Paragraph 31(a) provides that *“a single serious crime or multiple lesser offenses,”* may raise security concerns. He has two convictions within the last ten years. Paragraph 31(d) provides that where an *“individual is currently on parole or probation,”* may also raise security concerns. Applicant is still on probation as a result

of his most recent conviction. I find no mitigating condition that is applicable here. Criminal 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, Personal Conduct and Criminal 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.i.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a.~3.c.	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