



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



In the matter of:)	
)	
)	ISCR Case No. 14-01040
)	
)	
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 October 24, 2013. On August 26, 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 9, 2014. He answered the SOR in writing on September 19, 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 27, 2014. DOHA issued a notice of hearing that same day, and I convened the hearing as scheduled on November 24, 2014. The Government offered Exhibits (GXs) 1 through 5, which were received without objection. Applicant testified on his own behalf,

as did his estranged 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 December 24, 2014, he submitted Exhibit B. On January 12, 2015, Department Counsel noted no objection. As the undersigned was on leave from January 12~18, 2015, and January 19, 2015 was a Federal Holiday, the record closed on January 20, 2015. 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 admitted the factual allegations in all 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, a 52-year old naturalized citizen, holds a Bachelor's Degree from a foreign university. (TR at page 16 line 11 to page 17 line 5.) He has worked for his current employer for about "10 years," and has held a security clearance since 2007. (TR at page 17 lines 6~12, and GX 1 at pages 43~44.) He has never had a security clearance violation. (TR at page 17 lines 15~22.) He is pending divorce from his estranged spouse, and attributes his past-due indebtedness to their legal separation. (TR at page 18 line 24 to page 20 line 24, and at page 21 line 3 to page 26 line 7.)

1.a. Applicant filed for the protection of a Chapter 7 Bankruptcy in January of 2011. (TR at page 26 line 13 to page 28 line 7.) However, as he thought this bankruptcy might affect his security clearance, he did not follow through with the bankruptcy; and as a result, it was dismissed in February of 2011. (*Id.*)

1.b.~1.o. Applicant admits to these 14 debts owed to 12 different creditors (1.d. and 1.f. are to the same creditor, and 1.i. and 1.o. are to the same creditor) in an amount totaling in excess of \$85,000. At his November 2014 hearing Applicant averred "I'm going to start contacting them right away, but I think that by January [2015] - the beginning of February time frame, I will be able to start making payments on them." (TR at page 40 lines 19~23.) However, his estranged spouse, who is also an attorney, testified that they may again file for the protection of bankruptcy. (TR at page 50 line 1 to page 51 line 7.) Finally, although it is not considered testimony, in Applicant's December 2014 "Closing Argument;" (CA) he now cites his state's code of civil procedure, without any attachment, averring that these debts were "charged off and . . . [are] time barred by the four year Statute of Limitations for contractual debts" from collection. It is clear to the undersigned that Applicant has absolutely no intention of making a good-faith effort to address these admitted debts.

1.p. Applicant admits a debt to Creditor P in the amount of about \$2,169. At his hearing, he averred wanted "to settle" this debt. (TR at page 32 line 13 to page 33 line

9.) In his CA, Applicant avers he is “currently in the process of resolving this debt” but has submitted nothing further in this regard. I find that this admitted debt is still past due.

1.q. Applicant admits a debt to Creditor Q in the amount of about \$119. At his hearing, he averred that he “settled” this debt and would forward documentation supporting his averment. (TR at page 33 line 10 to page 34 line 4.) In his CA, Applicant avers it is “paid,” but has submitted nothing further in this regard. I find that this admitted debt is still past due.

1.r. Applicant admits a debt to Creditor R in the amount of about \$100. At his hearing, he averred that this medical bill of his estranged spouse is “being disputed.” (TR at page 34 lines 5~22, and 44 line 11 to page 45 line 15.) In his CA, Applicant avers that “my estranged wife is either going to pay or dispute” the debt, but has submitted nothing further in this regard. I find that this admitted debt is still past due.

1.s. Applicant initially admitted this debt to Creditor S in the amount of about \$94. He and his estranged now dispute this debt. (TR at page 35 lines 4~22, and at page 45 line 16 to page 46 line 1.) As Applicant has submitted nothing further in this regard, such as a dispute letter, I find that this admitted debt is still past due.

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 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, which he has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant can attribute his past-due debts to his pending divorce, he has failed to act “*responsibly under the circumstances*,” as required by Subparagraph 20(b) with respect

to his debts. Furthermore, Subparagraph 20(d) requires that “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Other than his bare averments, Applicant has yet to credibly address his past-due debts totaling in excess of \$87,000. Accordingly, Applicant has not met his burden of persuasion.

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. Applicant is well thought of in the work place. (AppXs A and B.) However, the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. Applicant has over \$87,000 in past-due indebtedness that he has yet to address. For these reasons, 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
Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant

Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	Against Applicant
Subparagraph 1.k.	Against Applicant
Subparagraph 1.l.	Against Applicant
Subparagraph 1.m.	Against Applicant
Subparagraph 1.n.	Against Applicant
Subparagraph 1.o.	Against Applicant
Subparagraph 1.p.	Against Applicant
Subparagraph 1.q.	Against Applicant
Subparagraph 1.r.	Against Applicant
Subparagraph 1.s.	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