



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



In the matter of:)	
)	
)	ISCR Case No. 14-02041
)	
)	
Applicant for Security Clearance)	

Appearances

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

May 12, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on November 5, 2013. On October 2, 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 October 9, 2014. He answered the SOR in writing (Answer) on October 20, 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 2, 2014. DOHA issued a notice of hearing on December 8, 2014, setting the case for hearing on December 23, 2014; but because of the Christmas holidays, it was continued until January 22, 2015, when I convened the hearing. The Government offered Exhibits

(GXs) 1 through 5, 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 January 30, 2015. I granted Applicant's requests, one made at his hearing and two made after his hearing, to keep the record open until April 23, 2015, to submit additional matters. On February 23rd, March 23rd and April 6th, 2015, he submitted Exhibits B, C and D, respectively, which were received without objection. The record closed on April 23, 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 Subparagraphs 1.b., 1.c., and 1.e.~1.p. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.a. and 1.d. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

Applicant is a 31 year employee of a defense contractor, for which he has worked for six years. (TR at page 37 line 8 to page 38 line 25.) Much of his alleged past-due debt can be attributed to his bout with cancer in 2009, and to his subsequent chemotherapy. (TR at page 21 line 19 to page 22 line 1, and at page 40 line 2 to page 42 line 5.)

1.a. It is alleged that Applicant is indebted to Creditor A for a past-due debt of about \$8,152. (GX 2 at page 6.) This debt involves a vehicle that was destroyed in a fire while being serviced at Creditor A's garage. (TR at page 22 line 24 to page 25 line 7.) Applicant has a "Total Balance [of] \$0.00" on this debt, as evidenced by a document from Creditor A. (Answer at page 4.) This allegation is found for Applicant.

1.b. Applicant admits that he is indebted to Creditor B for a past-due medical debt in the amount of about \$666, as the result of a 2013 surgery. (TR at page 25 line 8 to page 26 line 3.) His medical insurance covers 90% of his medical costs. (*Id.*) Despite having been given four months to do so, Applicant has yet to address this debt; and as such, it is found against Applicant.

1.c. Applicant admits that he is indebted to Creditor C for a past-due medical debt in the amount of about \$567. (TR at page 26 lines 4~23.) Applicant made a payment of \$136 towards this debt in March of 2015, as evidenced by a credit card statement. (AppX C at page 2.) I find that he is making a good-faith effort to address this debt; and as such, it is found for Applicant.

1.d. It is alleged that Applicant is indebted to Creditor D for a past-due debt of about \$537. Applicant disputes this debt as not being his debt. (TR at page 26 line 24

to page 28 line 11.) As this does not appear on the Government's most recent credit report, this allegation is found for Applicant.

1.e.~1.g., 1.l. and 1.o. Applicant admits that he is indebted to Creditor E for five past-due medical debts totaling about \$1,103. (TR at page 28 line 12 to page 29 line 16.) Despite having been given four months to do so, Applicant has yet to address these debts; and as such, they are found against Applicant.

1.h. and 1.n. Applicant admits that he is indebted to Creditor H for two past-due medical debts totaling about \$277. (TR at page 29 line 20 to page 30 line 17.) Despite having been given four months to do so, Applicant has yet to address these debts; and as such, they are found against Applicant.

1.i. Applicant admits that he is indebted to Creditor I for a past-due medical debt in the amount of about \$109. (TR at page 30 lines 18~25.) Applicant made a payment of \$123 towards this debt in March of 2015, as evidenced by a credit card statement. (AppX C at page 1.) I find that he has paid this debt; and as such, it is found for Applicant.

1.j. Applicant admits that he is indebted to Creditor J for a past-due medical debt in the amount of about \$106. (TR at page 31 lines 1~17.) Despite having been given four months to do so, Applicant has yet to address this debt; and as such, it is found against Applicant.

1.k. Applicant admits that he is indebted to Creditor K for a past-due medical debt in the amount of about \$97. (TR at page 31 lines 1~17.) Despite having been given four months to do so, Applicant has yet to address this debt; and as such, it is found against Applicant.

1.l. (This allegation, regarding Creditor E, has already been discussed, above.)

1.m. Applicant admits that he is indebted to Creditor M for a past-due medical debt in the amount of about \$64. (TR at page 31 lines 1~17.) Despite having been given four months to do so, Applicant has yet to address this debt; and as such, it is found against Applicant.

1.n. (This allegation, regarding Creditor H, has already been discussed, above.)

1.o. (This allegation, regarding Creditor E, has already been discussed, above.)

1.p. Applicant admits that he is indebted to Creditor P for a past-due medical debt in the amount of about \$84. (TR at page 31 lines 1~17.) Despite having been given four months to do so, Applicant has yet to address this debt; and as such, it is found against Applicant.

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 attributes much of his past-due debts to his medical issues, 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 vehicle debt (1.a.) and payments made towards two medical debts (1.c. and 1.i.); despite being given four months to do so, Applicant has yet to credibly address his past-due debts totaling about of \$2,397. 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 about \$2,400 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.	For Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	For 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

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