

behalf. DOHA received the transcript of the hearing (TR) on September 24, 2015. I granted Applicant's requests, one made at his hearing and two made after his hearing, to keep the record open until November 23, 2015, to submit additional matters. On November 17, 2015, he submitted Exhibits (AppXs) 1 through 15, which were received without objection. The record closed on November 24, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding the year "2014" to the first sentence of Subparagraph 1.a., alleging Applicant failed to file his Federal and state tax returns for tax year 2014 (in addition to tax years 2011, 2012 and 2013). (TR at page 32 line 17 to page 33 line 11.). There being no objection, Subparagraph 1.a. was so amended.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in all the Subparagraphs of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Guideline f - Financial Considerations

Applicant is 49 years old, is employed by a defense contractor, and attributes the Subparagraph 1.a., state and federal tax filings, to periods of unemployment. (TR at page 28 line 22 to page 29 line 1., and GX 1 at pages 5 and 12~14.)

1.a. Applicant denies that he has failed to his Federal and state tax returns for tax years 2011~2014. (TR at page 25 line 17 to page 29 line 13, and at page 31 line 24 to page 35 line 5.) He has filed these tax returns pursuant to filing extensions, as evidenced by documentation from the Internal Revenue Service (IRS), and from his tax attorney. (*Id.*, and AppXs 10 and 15.) This allegation is found for Applicant.

1.b. Applicant denies that he is indebted to Creditor B as the result of vacating a rental apartment. (TR at page 23 line 21 to page 25 line 9.) He has no current balance due, as evidenced by documentation from Creditor B. (AppX 8 at page 2.) This allegation is found for Applicant.

1.c. and 1.d. Applicant denies that he is indebted to Creditor C for past-due medical bills totaling \$2,714. (TR at page 21 line 22 to page 23 line 20.) He was the victim of identity theft, as admitted to by Creditor C. (AppX 5.)

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 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. loss of employment . . .), and the individual acted responsibly under the circumstances."* Applicant's past-due indebtedness is directly attributed to his unemployment. 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 made a good-faith effort to resolve the alleged past-due debts, and has filed his tax returns.

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

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