



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



In the matter of:)	
)	
)	ISCR Case No. 15-03509
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: Sean M. Bigley, Esquire

May 25, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 28, 2013. On November 16, 2015, 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 December 15, 2015. He answered the SOR in writing through counsel on December 28, 2015, 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 March 15, 2016. DOHA issued a notice of hearing on March 16, 2016, and I convened the hearing as scheduled on April 5, 2016. The Government offered Exhibits (GXs) 1 through 7, which were received without objection. Applicant testified on his own behalf

and submitted Exhibits (AppXs) A through S, which were received without objection. DOHA received the transcript of the hearing (TR) on April 14, 2016. The record closed on April 14, 2016. 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 Subparagraphs 1.a., 1.b., 1.d., and 1.h. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.c., 1.e.~1.g., and 1.i.~1.n. 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 52-year-old employee of a federal contractor for which he has worked for about seven years. (TR at page 32 line 22 to page 33 line 6, and GX 1 at pages 5 and 12~13.) He also served in the “U.S. Air Force, Air National Guard and U.S. Army National Guard . . . [for] about 13 and a half years.” (TR at page 33 line 25 to page 34 at line 24, and AppX P.) He has completed financial training, and has a monthly budgetary surplus of about \$720. (TR at page 55 lines 13~19, and AppXs N and O.)

1.a. and 1.b. Applicant was informed by his “enlisted retirement officer” that his “civil service disability” pay was not taxable by his state. (TR at page 34 line 25 to page 37 line 4.) About “four years” later in 2012, he was informed by the state that that advice was incorrect. (TR at page 37 line 5 to page 38 line 12.) He contacted his state for clarification, but it’s representative was “very hostile.” (TR at page 38 line 13 to page 40 line 19.) It was not until Applicant contacted his U.S. Senator; and got him involved, that his state taxing authority became cooperative. (TR at page 40 line 20 to page 42 line 7.) He is now making monthly payments of \$100 towards two tax liens totaling about \$5,612, as evidenced by documents from the state. (AppX A.) I find that Applicant is making a good-faith effort to repay his state taxes.

1.c. It is alleged that Applicant is indebted to Creditor C in the amount of about \$247 for past cable TV service. He successfully disputed this debt as he “canceled [this] service in 2011.” (TR at page 42 line 8 to page 44 line 17.) This is evidenced by correspondence from Creditor C. (AppX B.) I find that Applicant has successfully resolved this alleged debt.

1.d. It is alleged that Applicant is indebted to Creditor D in the amount of about \$180 for past electrical service. He initially disputed this debt; but as it “was a small bill,” Applicant just decided to pay it. (TR at page 44 line 18 to page 46 line 2.) This is evidenced by correspondence from Creditor D. (AppX B.) I find that Applicant has successfully resolved this alleged debt.

1.e. It is alleged that Applicant is indebted to Creditor E in the amount of about \$105 for another past-due electrical service bill. He successfully disputed this debt, and the alleged “bad debt has been removed from . . . [Applicant’s] account.” (TR at page 46 lines 3~17, and AppX D..) This is evidenced by correspondence from counsel as to a class-action suit against Creditor E. (AppX D.) I find that Applicant has successfully resolved this alleged debt.

1.f. It is alleged that Applicant is indebted to Creditor F in the amount of about \$104 for past-due medical bill. He initially disputed this debt, but it is now “PAID IN FULL.” (TR at page 46 lines 18~25, and AppX E, emphasis in original.) This is evidenced by correspondence from Creditor F. (AppX D.) I find that Applicant has successfully resolved this alleged debt.

1.g. It is alleged that Applicant is indebted to Creditor G in the amount of about \$75 for another past-due medical bill. He disputes this debt, as he “cancelled a medical appointment with . . . [Creditor G] and . . . had done it more than the 24 hours required by . . . [Creditor G’s] office” (TR at page 47 line 1 to page 48 line 8, and AppX F.) This is evidenced by a dispute letter to Creditor G’s collection representative. (AppX D.) I find that Applicant has a reasonable basis to dispute this alleged debt.

1.h. It is alleged that Applicant is indebted to Creditor H in the amount of about \$75 for past-due medical bill. He has “paid in full” this debt. (TR at page 48 lines 9~21, and AppX G.) This is evidenced by correspondence from Creditor H’s “Account Representative.” (AppX G.) I find that Applicant has successfully resolved this alleged debt.

1.i. It is alleged that Applicant is indebted to Creditor I in the amount of about \$72 for a past-due medical bill. He disputes this debt, as he avers he cancelled this medical appointment in a timely fashion. (TR at page 48 line 22 to page 49 line 17, and AppX H.) This is evidenced by a dispute letter to Creditor I’s collection representative. (AppX H.) I find that Applicant has a reasonable basis to dispute this alleged debt.

1.j. It is alleged that Applicant is indebted to Creditor J in the amount of about \$976. He disputes this debt, as he avers he never had an account with Creditor J. (TR at page 49 line 24 to page 51 line 15, and AppX I.) This is evidenced by a dispute letter to Creditor J’s collection representative. (AppX I.) I find that Applicant has a reasonable basis to dispute this alleged debt.

1.k. It is alleged that Applicant is indebted to Creditor K in the amount of about \$33 for an past-due medical bill. He successfully disputed this debt, as evidenced by correspondence from a credit reporting service. (Tr at page 51 line 16 to page 52 line 1, and AppX J at page 2.) I find that Applicant has successfully resolved this alleged debt.

1.l. It is alleged that Applicant is indebted to Creditor L in the amount of about \$533. He successfully disputed this debt, as evidenced by correspondence from

Creditor L. (Tr at page 52 lines 2~18, and AppX K at page 3.) I find that Applicant has successfully resolved this alleged debt.

1.m. It is alleged that Applicant is indebted to Creditor M in the amount of about \$226. He successfully disputed this debt, as evidenced by correspondence from Creditor M. (Tr at page 52 line 19 to page 53 line 22, and AppX L at page 1.) I find that Applicant has successfully resolved this alleged debt.

1.n. It is alleged that Applicant is indebted to Creditor N in the amount of about \$198 for past-due medical bill. He initially disputed this debt, but it is now "Paid in Full." (TR at page 53 line 23 to page 54 line 14, and AppX M.) This is evidenced by correspondence from Creditor N. (AppX M.) I find that Applicant has successfully resolved this alleged debt.

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 conditions that could raise security concerns. Under Subparagraphs 19(a) and 19(c) an “*inability or unwillingness to satisfy debts*” and “*a history of not meeting financial obligations*” may raise security concerns. Applicant has had past-due indebtedness. However, I find countervailing Mitigating Conditions that are applicable here. Under Subparagraph 20(d), it may be mitigating where “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,*” and under Subparagraph 20(e) where “*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute and provides evidence of actions to resolve the issue.*” Applicant is paying his back state taxes under a payment plan; and has paid, successfully disputed or is disputing the other alleged debts. Financial Considerations is found for Applicant.

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. Those who know Applicant in the work place speak most highly of him. (AppX R.) 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
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant

Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	For Applicant
Subparagraph 1.n.	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