



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-02414
)	
Applicant for Security Clearance)	

Appearances

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel
For Applicant: *Pro Se*

March 27, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on August 27, 2007. On October 31, 2008, the Defense Office of Hearings and Appeals (DOHA) 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR soon thereafter. He answered the SOR in writing on November 25, 2008, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on January 8, 2009. The Applicant did not respond to the FORM. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated November 25, 2008, Applicant admitted the factual allegations of all the Subparagraphs of the SOR, with explanations.

Guideline F, Financial Considerations

The Applicant was unemployed from March~June of 1999 (Item 3 at page 5). When he was re-employed, his pay was substantially less (*Id*). This caused him to have financial difficulties (Item 3 at page 5).

The SOR alleges ten past due or charged off debts. They will be addressed in the order they are listed.

1.a. The first debt is a charged off credit card account in the amount of about \$5,476 (Item 5 at page 7). The Applicant avers that he is “[i]n 3rd party negotiations” regarding this debt, but has provided nothing further (Item 4 at pages 7~8). I find that this debt remains outstanding.

1.b. The second debt is past due to a bank in the amount of about \$2,582 (Item 5 at page 5). The Applicant again avers that he is “[i]n 3rd party negotiations” regarding this debt, but has provided nothing further (Item 4 at pages 3~4). I find that this debt remains outstanding.

1.c. The third debt is past due to the same bank in the amount of about \$1,522 (Item 5 at page 5). The Applicant avers that he is “[i]n 3rd party negotiations” regarding this debt, but has provided nothing further (Item 4 at pages 4~5). I find that this debt remains outstanding.

1.d. The fourth debt is a delinquent debt to another bank in the amount of about \$468 (Item 5 at page 7). The Applicant avers that he is also “[i]n 3rd party negotiations” regarding this debt, but has provided nothing further (Item 4 at pages 5~6). I find that this debt remains outstanding.

1.e. The fifth debt is a charged off gasoline credit card account in the amount of about \$1,282 (Item 5 at page 4). The Applicant avers that he is “[i]n 3rd party negotiations” regarding this debt, but has provided nothing further (Item 4 at pages 6~7). I find that this debt remains outstanding.

1.f. The sixth debt is a collection account to a third bank in the amount of about \$3,204 (Item 5 at page 3). The Applicant avers that he has “acquired a credit consular(*sic*) to negotiate” this debt, but has provided nothing further (Item 4 at page 2). I find that this debt remains outstanding.

1.g. The seventh debt is a delinquent debt to a fourth bank in the amount of about \$1,764 (Item 5 at page 3). The Applicant avers that he is “[i]n 3rd party negotiations” regarding this debt, but has provided nothing further (Item 4 at page 6). I find that this debt remains outstanding.

1.h. The eighth debt is a collection account to a utility company in the amount of about \$6,170 (Item 5 at page 8). The Applicant avers that he is “[i]n the process of 3rd party negotiations” regarding this debt, but has provided nothing further (Item 4 at page 3). I find that this debt remains outstanding.

1.i. The ninth debt is a collection account for another gasoline credit card account in the amount of about \$1,734 (Item 5 at page 6). The Applicant avers that he is “[i]n the process of 3rd party negotiations” regarding this debt, but has provided nothing further (Item 4 at pages 4). I find that this debt remains outstanding.

1.j. The last debt is a collection account to another utility company in the amount of about \$347 (Item 5 at page 3). The Applicant avers that he is “[i]n 3rd party negotiations” regarding this debt, but has provided nothing further (Item 4 at page 5). I find that this debt remains outstanding.

Policies

When evaluating an Applicant’s suitability for a security clearance, the Administrative Judge must consider the revised 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 common sense 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 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 “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 AG 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 AG Subparagraph 19(a), an “*inability or unwillingness to satisfy debts*” is potentially disqualifying. Similarly under AG Subparagraph 19(c), “*a history of not meeting financial obligations*” may raise security concerns. Subparagraph 20(b), states that 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.*” Here, the Applicant was unemployed in 1999, and was later employed with a substantial cut in pay; but, other than evidenced by his bare averments in response to the Government’s interrogatories, he has done little to address his very substantial past due indebtedness.

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. The Administrative Judge should consider the nine adjudicative process factors listed at AG Subparagraph 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) 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.”

Under AG ¶ 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.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has failed to mitigate the security concerns 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

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

RICHARD A. CEFOLA
Administrative Judge