



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-05265
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

March 2, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on September 14, 2007. On October 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines E and 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 on November 6, 2008. He answered the SOR in writing on November 24, 2008, and requested a hearing before an Administrative Judge. DOHA received the request on December 1, 2008, and I received the case assignment on January 5, 2009. DOHA issued a notice of hearing that same day, and I convened the hearing as scheduled on January 22, 2009. The

Government offered Exhibits (GXs) 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Exhibit (AppX) A, without objection. DOHA received the transcript of the hearing (TR) on February 3, 2009. I granted Applicant's request to keep the record open until February 5, 2009, to submit additional matters. On or about January 29, 2009, he submitted Exhibit B, without objection. The record closed on February 6, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

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

Guideline F - Financial Considerations

The Applicant had been employed in the defense sector with a security clearance for about 30 years (TR at page 20 line 13 to page 23 line 12). However, in February of 2006, he lost his job, and was rehired on a less than full time basis, in April or May of 2006 (TR at page 42 line 22 to page 44 line 10). This has caused the Applicant financial difficulties (*Id*).

In November of 2008, the Applicant filed for the protection of a Chapter 7 Bankruptcy (TR at page 34 line 22 to page 35 line 15, and AppX B at page 7). However, the Applicant's mother-in-law had passed away in September of 2008, and he and his spouse are now awaiting the disposition of her estate, before their bankruptcy petition can be finalized (TR at page 30 line 25 to page 32 line 22). His spouse may inherit as much as \$90,000, which would exceed the total of \$49,254 in unsecured debts filed in his bankruptcy (*Id*, and AppX B at page 30).

1.a. The first debt is to creditor #1 in the past due amount of about \$2,450 (TR at page 29 line 19 to page 30 line 25, and GX 8 at page 2). This debt is included in Applicant's Chapter 7 Bankruptcy, as evidenced by its Schedule F at page 2.

1.b. The second debt is to creditor #2 in the past due amount of about \$1,683 (TR at page 32 line 23 to page 33 line 4, and GX 8 at page 2). This debt is included in Applicant's Chapter 7 Bankruptcy, as evidenced by its Schedule F at page 1.

1.c. The third debt is to creditor #3 in the past due amount of about \$4,357 (TR at page 33 lines 5~20, and GX 6 at page 2). This debt is included in Applicant's Chapter 7 Bankruptcy, as evidenced by its Schedule F at page 2.

1.d. The fourth debt is to creditor #4 in the past due amount of about \$200 (TR at page 33 line 21 to page 34 line 4, and GX 8 at page 2). This debt is included in Applicant's Chapter 7 Bankruptcy, as evidenced by its Schedule F at page 2.

1.e. The fifth debt is to creditor #5 in the past due amount of about \$2,370 (TR at page 34 lines 5~14, and GX 8 at page 3). This debt is included in Applicant's Chapter 7 Bankruptcy, as evidenced by its Schedule F at page 3.

1.f. The last debt is to creditor #6 in the past due amount of about \$1,037 (TR at page 34 lines 15~21, and GX 6 at page 3). This debt is included in Applicant's Chapter 7 Bankruptcy, as evidenced by its Schedule F at page 3.

Guideline E - Personal Conduct

2.a. The Applicant was less than candid when he answered Section 28 on his September 2007 e-QIP (TR at page 38 line 7 to page 40 line 17, and GX 1 at pages 30~31). He checked the "No" boxes, as to having any debts more that 90 or 180 days past due, in the last seven years (GX 1 at pages 30~31). He answered these questions falsely, as he was in "[f]ear of keeping his job" (TR at page 39 lines 19~22). I find this to be a wilful falsification.

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 ¶ 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 ¶ 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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 at least five past due debts that he has been unable to address in a timely fashion. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Subparagraph 20(d) applies where the evidence shows “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” The Applicant has included all of his alleged past due debts in his filing for the protection of a Chapter 7 Bankruptcy. He is awaiting the probate of his mother-in-law’s estate before this petition can be finalized. If he and his spouse receive

more than \$50,000 from her estate, the petition will be dropped and the past due debts will be paid.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 15: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information."

Disqualifying Condition under Subparagraph 16(a) applies. It provides that the "*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . .*" may be disqualifying. I can find no countervailing Mitigating Condition here, as Applicant falsified his e-QIP for fear of losing his job.

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 ¶ 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. His former supervisor speaks most highly of the Applicant (AppX A).

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his Personal Conduct.

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 J:	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
Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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