



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 08-06524
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

January 9, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on October 5, 2007. On September 23, 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 on September 26, 2008. He answered the SOR in writing on October 10, 2008, and requested a hearing before an Administrative Judge. DOHA received the request on October 14, 2008, and I received the case assignment on October 24, 2008. DOHA issued a notice of hearing on October 29, 2008, and I convened the hearing as scheduled on November 19, 2008.

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 C, without objection. A colleague also testified on the cApplicant's behalf. DOHA received the transcript of the hearing (TR) on December 1, 2008. I granted Applicant's request to keep the record open until December 19, 2008, to submit additional matters. On December 19, 2008, he submitted Exhibit D, without objection. The record closed on December 22, 2008. 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, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

The Applicant is a 32 year old Senior Network Security Engineer, who works for a Government contractor (TR at page 4 lines 2~19, and at page 23 lines 2~21). He was unemployed for about ten months, from September of 2002 until June of 2003 (TR at page 26 line 11 to page 28 line 4, and at page 57 lines 2~19). He has also been separated from his wife for "[a]bout three years" (TR at page 29 lines 6~15). The unemployment and legal separation have caused the Applicant's financial difficulties. Delineated on the SOR are 26 alleged past due debts:

1.a. The Applicant is indebted to creditor #1 in the amount of about \$6,967, as the result of an eviction (TR at page 32 line 12 to page 34 line 8, and GX 4 at page 1). The Applicant avers that he is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.b. and 1.z. Creditor #2 and #26 are one and the same creditor (TR at page 34 line 25 to page 38 line 6). These two debts involve student loans, and total about \$6,928 (*Id*, GX 4 at page 1 and GX 5 at page 11). The Applicant is making monthly payments of \$95 towards these debts, as evidenced by a letter from a fiscal intermediary and by an online banking statement ((TR at page 34 line 25 to page 38 line 6, AppX C at page 1, and AppX D at page 5).

1.c. The Applicant is indebted to creditor #3 in the amount of about \$3,758, as the result of another eviction (TR at page 38 line 7 to page 39 line 16, and GX 4 at page 5). The Applicant is making monthly payments of \$200 towards this debt, as evidenced by documentation from this creditor (*Id*, and AppX C at pages 2~3).

1.d. The Applicant is indebted to creditor #4 in the amount of about \$904, a wireless phone bill (TR at page 39 line 17 to page 41 line 22, and GX 4 at page 6). The

Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.e. The Applicant is indebted to creditor #5 in the amount of about \$884, a cable TV bill (TR at page 41 line 23 to page 42 line 29, and GX 4 at page 7). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.f. The Applicant is indebted to creditor #6 in the amount of about \$819, a medical bill (TR at page 42 line 25 to page 43 line 15, and GX 4 at page 7). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.g. The Applicant is indebted to creditor #7 in the amount of about \$497, a satellite TV bill (TR at page 43 line 16 to page 45 line 4, and GX 4 at page 8). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.h. The Applicant is indebted to creditor #8 in the amount of about \$472, a utility bill (TR at page 46 lines 6~14, and GX 4 at page 9). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.i. The Applicant is indebted to creditor #9 in the amount of about \$294, another utility bill (TR at page 45 lines 2~22, and GX 4 at page 10). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.j. The Applicant is indebted to creditor #10 in the amount of about \$207, another medical bill (TR at page 46 line 15 to page 47 line 3, and GX 4 at page 10). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.k. The Applicant is indebted to creditor #11 in the amount of about \$194, another cable TV bill (TR at page 47 lines 4~11, and GX 4 at pages 10~11). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.l. The Applicant is indebted to creditor #12 in the amount of about \$180, another wireless phone bill (TR at page 47 line 12 to page 48 line 2, and GX 4 at pages 11~12). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.m. The Applicant is indebted to creditor #13 in the amount of about \$166, a third wireless phone bill (TR at page 48 lines 3~9, and GX 4 at page 12). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.n. The Applicant is indebted to creditor #14 in the amount of about \$155, a third medical bill (TR at page 48 lines 10~16, and GX 4 at page 13). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.o. The Applicant is indebted to creditor #15 in the amount of about \$101, a fourth medical bill (TR at page 48 lines 17~24, and GX 4 at page 13). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.p. The Applicant is indebted to creditor #16 in the amount of about \$73, a third utility bill (TR at page 48 line 25 to page 49 line 10, and GX 4 at pages 13~14). The Applicant avers that he paid this debt about a week before his hearing, and would provide documentation evidencing his payment (*Id*). He has provided no such documentation.

1.q. The Applicant is indebted to creditor #17 in the amount of about \$47, a fifth medical bill (TR at page 49 lines 11~21, and GX 4 at page 14). The Applicant avers that he paid this debt about a week before his hearing, and would provide documentation evidencing his payment (*Id*). He has provided no such documentation.

1.r. The Applicant is indebted to creditor #18 in the amount of about \$36, a sixth medical bill (TR at page 49 line 22 to page 50 line 3, and GX 4 at page 14). The Applicant avers that he paid this debt about a week before his hearing, and would provide documentation evidencing his payment (*Id*). He has provided no such documentation.

1.s. The Applicant is indebted to creditor #19 in the amount of about \$699, a truck loan (TR at page 50 line 4 to page 51 line 6, at page 51 line 13 to page 54 line 3 and GX 4 at page 15). The Applicant disputes this debt, as he maintains that the truck had a faulty transmission when sold to him (*Id*). The truck was repossessed by the dealer; but Applicant's dispute is with the dealer, and not with the bank that provided the loan. As such, I find that this debt is still outstanding.

1.t. The Applicant is indebted to creditor #20 in the amount of about \$461, a fourth phone bill (TR at page 51 lines 7~12, and GX 5 at page 9). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.u. The Applicant is indebted to creditor #21 in the amount of about \$97, a seventh medical bill (TR at page 54 lines 4~18, and GX 5 at page 7). The Applicant avers that he paid this debt about a week before his hearing, and would provide documentation evidencing his payment (*Id*). He has provided no such documentation.

1.v. The Applicant is indebted to creditor #22 in the amount of about \$616, a credit card bill (TR at page 54 line 19 to page 55 line 12, and GX 5 at page 8). The

Applicant initially disputed this debt, but has since made a \$379.62 payment in settlement of this debt (*Id*). This is evidenced by an on-line banking statement (GX 5 at page 8).

1.w. The Applicant is indebted to creditor #23 in the amount of about \$3,242, as the result of a third eviction (TR at page 55 line 13, and GX 5 at page 9). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

1.x. The Applicant is indebted to creditor #24 in the amount of about \$125, an eighth medical bill (TR at page 56 lines 4~18, and GX 5 at page 12). The Applicant avers that he paid this debt about a week before his hearing, and would provide documentation evidencing his payment (*Id*). He has provided no such documentation.

1.y. The Applicant is indebted to creditor #25 in the amount of about \$1,369, a ninth medical bill (TR at page 56 lines 13~23). The Applicant is trying to address his smaller debts first; and as result, he has been unable to address this past due debt (*Id*).

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 AG ¶ 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 ¶ 19(a), an “*inability or unwillingness to satisfy debts*” is potentially disqualifying. Similarly under AG ¶ 19(c), “*a history of not meeting financial obligations*” may raise security concerns. The Applicant has a significant amount of past due indebtedness.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 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, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.*” The Applicant’s past due indebtedness is directly related to a significant period of unemployment in 2002~2003. His separation from his wife also exacerbated his financial difficulties. This being said, however, the Applicant has done

simply too little too late to address the vast majority of his past due debts. Of the 26 debts alleged in the SOR, he has only satisfactorily addressed four debts.

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. A colleague testified favorably on Applicant's behalf (TR at page 68 line 23 to page 71 line 4). Furthermore, his Information Security Manager does offer a letter of support (AppX D at page 1).

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me with 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 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:	For Applicant
Subparagraph 1.c:	For 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
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
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	For 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