



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-08413
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

April 21, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on May 5, 2008. On November 13, 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 November 21, 2008. He answered the SOR in writing soon thereafter, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on January 26, 2009. The Applicant did not to 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 undated Answer to the SOR, Applicant admitted the factual allegations in Paragraphs 1.b, 1.c, 1.e~1.n, 1.p. and 1.r. of the SOR, with explanations. He denied the factual allegations in Paragraphs 1.a, 1.d, 1.o. and 1.q. of the SOR.

Guideline F - Financial Considerations

The Applicant incurred “just about” all of his past due indebtedness from marriages with his “1st & 2nd ex wife(sic)” (Item 4 at page 4). As a result, there are 18 alleged past due debts.

1.a. The first debt is for a car loan in the amount of about \$10,289 (Item 7 at page 1). The Applicant denies this past due debt, averring that his “ex wife got [it] in [their] divorce” (Item 4 at page 1). As the creditor was not a party to Applicant’s divorce, it is not bound by the terms of that divorce. I find that this debt is still owing.

1.b. The second debt is a medical bill in the amount of about \$192 (Item 7 at page 1). The Applicant admits this past due debt. I find that this debt is still owing.

1.c. The third debt is a wireless phone bill in the amount of about \$439 (Item 7 at page 1). The Applicant admits this past due debt. I find that this debt is still owing.

1.d. The fourth debt is another medical bill in the amount of about \$64 (Item 7 at page 2). The Applicant denies this past due debt, averring that he is “not sure” about this debt, but offers nothing further (Item 4 at page 2). I find that this debt is still owing.

1.e. The fifth debt is creditor E in the amount of about \$184 (Item 7 at page 2). The Applicant admits this past due debt. I find that this debt is still owing.

1.f. The sixth debt is a third medical bill in the amount of about \$1,469 (Item 7 at page 2). The Applicant admits this past due debt. I find that this debt is still owing.

1.g. The seventh debt is a credit card bill in the amount of about \$2,021 (Item 7 at page 2). The Applicant admits this past due debt. I find that this debt is still owing.

1.h. The eighth debt is another credit card bill in the amount of about \$2,680 (Item 7 at page 2). The Applicant admits this past due debt. I find that this debt is still owing.

1.i. The ninth debt is to a credit union in the amount of about \$187 (Item 7 at page 2). The Applicant admits this past due debt. I find that this debt is still owing.

1.j. The tenth debt is a cable TV bill in the amount of about \$192 (Item 7 at page 2). The Applicant admits this past due debt. I find that this debt is still owing.

1.k. The eleventh debt is another wireless phone bill in the amount of about \$603 (Item 7 at page 2). The Applicant admits this past due debt. I find that this debt is still owing.

1.l. The twelfth debt is for another car loan in the amount of about \$9,512 (Item 7 at page 2). The Applicant admits this past due debt. I find that this debt is still owing.

1.m. The thirteenth debt is to creditor M in the amount of about \$683 (Item 8 at page 4). The Applicant admits this past due debt. I find that this debt is still owing.

1.n. The fourteenth debt is gas credit card bill in the amount of about \$666 (Item 8 at page 6). The Applicant admits this past due debt. I find that this debt is still owing.

1.o. The fifteenth debt is for a fourth medical bill in the amount of about \$34,493 (Item 8 at page 9). The Applicant denies this past due debt, again averring that his “ex wife got [it] in [their] divorce” (Item 4 at page 2). As the creditor was not a party to Applicant’s divorce, it is not bound by the terms of that divorce. I find that this debt is still owing.

1.p. The sixteenth debt is to a bank in the amount of about \$7,516 (Item 8 at page 9). The Applicant admits this past due debt. I find that this debt is still owing.

1.q. The seventeenth debt is to creditor Q in the amount of about \$8,947 (Item 8 at page 10). The Applicant denies this past due debt, averring that his “ex wife got [it] in [their] divorce” (Item 4 at page 3). As the creditor was not a party to Applicant’s divorce, it is not bound by the terms of that divorce. I find that this debt is still owing.

1.r. The final debt is a utility bill in the amount of about \$406 (Item 8 at page 11). The Applicant admits this past due debt. I find that this debt is still owing.

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), it may be mitigating where “*the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., . . . divorce or separation), and the individual acted responsibly under the circumstances.*” As noted above, the Applicant attributes his financial difficulties to two prior divorces, but he has done nothing to address his substantial past due indebtedness. As such, I can find no countervailing mitigating conditions that are applicable.

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.

Here, the Applicant has offered nothing to demonstrate that he is addressing any of his past due debts. Overall, the record evidence leaves me with questions and 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:	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
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

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