



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-09761
)	
Applicant for Security Clearance)	

Appearances

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

August 31, 2009

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on May 8, 2008. On March 11, 2009, 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 March 20, 2009. He answered the SOR in writing on April 8, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on April 28, 2009, and I received the case assignment on May 1, 2009. DOHA issued a notice of hearing on May 6, 2009, and I convened the hearing as scheduled on May 29, 2009. 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 D, without objection. DOHA received the transcript of the hearing (TR) on June 3, 2009. I granted Applicant's request to keep the record open until June 30, 2009, to submit additional matters. On June 22, 2009, and again on June 29, 2009, he submitted Exhibits E and F, respectively, which were admitted without objection. The record closed on June 30, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations, with explanations. The Applicant is a 40 year old Army Veteran, who is employed as an electronic technician in the defense industry (TR at page 28 line 21 to page 30 line 1). As a result of his military service, he suffered injuries during jumps in airborne operations (TR at page 30 line 3 to page 31 line 24). He also suffers from Barrett's Disease, "the erosion of the esophagus with lesions and growths on the inside of the esophagus," which he attributes to taking anti-nerve gas pills while stationed in Iraq and Saudi Arabia, and to the resulting airborne debris from a scud missile attack (*Id*, TR at page 27 line 3 to page 28 line 12, and AppX C). In any event, the Applicant receives 40% disability from the Veterans Administration (TR at page 37 line 25 to page 38 line 6). Upon leaving active duty with the Army, the Applicant was unemployed from 2001~2008, or about eight years (Tr at page 34 line 9 to page 37 line 19). This extended period of unemployment is directly related to Applicant's medical condition, and has caused the Applicant significant financial difficulties.

1.a. The Applicant is indebted to creditor A in the amount of about \$7,885, as the result of an outstanding judgment (GX 7 at page 1). This consolidated credit card debt has been included in a Chapter 7 Bankruptcy, filed by the Applicant in May of 2009 (TR at page 41 line 8 to page 42 line 11, at page 43 lines 1~4, and AppX C schedule F at page 2). A meeting of creditors was scheduled for June 18, 2009, and his Bankruptcy Attorney verifies that "[a]t the hearing, no creditors of . . . [the Applicant] appeared, . . . [the Chapter 7 Trustee] had no issues with the bankruptcy, and the meeting was concluded" (AppX F). His counsel expects "a Chapter 7 Discharge in approximately 60 days, at which point his [Applicant's] debts will be discharged" (*Id*).

1.b. It is alleged that the Applicant is indebted to creditor B in the amount of about \$92 (GX 3 at page 13). The Applicant is unaware of this debt; but in an abundance of caution and pursuant to the advice of counsel, it has been included in Applicant's May 2009, Bankruptcy filing (TR at page 43 line 5 to page 44 line 15, and AppX C Schedule F at page 2).

1.c. It is alleged that the Applicant is indebted to creditor C in the amount of about \$55 (GX 3 at page 7). The Applicant is also unaware of this debt; but in an abundance of caution and pursuant to the advice of counsel, it has been included in Applicant's May 2009, Bankruptcy filing (TR at page 44 line 19 to page 45 line 10, and AppX C Schedule F at page 1).

1.d. It is alleged that the Applicant is indebted to creditor D in the amount of about \$13,509 (GX 3 at page 9). The Applicant is unaware of this debt; but in an abundance of caution and pursuant to the advice of counsel, it has been included in Applicant's May 2009, Bankruptcy filing (TR at page 45 lines 11~23, and AppX C Schedule F at page 1).

1.e. Lastly, the Applicant is indebted to creditor F in the amount of about \$9,903, which he believes is a consolidated credit card debt (TR at page 45 line 24 to page 46 line 6, and GX 3 at page 12). This debt has been included in a Chapter 7 Bankruptcy filing (AppX C Schedule F at page 2).

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. During his extended period of unemployment or underemployment, the Applicant accumulated his delinquent debt. These are clearly countered by the Mitigating Conditions found in Subparagraphs 20(b) and 20 (d). Under 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., loss of employment, . . . unexpected medical emergency . . .), and the individual acted responsibly under the circumstances.”* Furthermore, Subparagraph 20(d) applies where the evidence shows *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Here, the Applicant, by filing for the protection of a Chapter 7 Bankruptcy, has addressed all of the alleged past due debt.

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) 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." 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, he has the unqualified support of a colleague (AppX E). This colleague avers, in part, the following:

I have personally worked in the defense industry since 1973 and have carried a US security clearance throughout my career. Working with . . . [the Applicant] daily, we have had many discussions about the importance of the roles we both play in maintaining a strong national defense system, and I am quite comfortable being a character reference for . . . [the Applicant]. It is my opinion that . . . [the Applicant's] moral fiber and strong patriotism make him a highly trusted and reliable contributor to our defense efforts (AppX E).

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 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:	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

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge