



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-10456
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: Ms. Megan Levins, Personal Representative

April 27, 2010

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on July 17, 2008. On November 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline ***F for the 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 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.

The Applicant acknowledged receipt of the SOR soon thereafter. He answered the SOR in writing, and requested a hearing before an Administrative Judge. DOHA received the request on or about December 3, 2009, and I received the case assignment on January 19, 2010. DOHA issued a notice of hearing on January 25, 2010, and I convened the hearing as scheduled on February 22, 2010. The

Government offered Exhibits (GXs) 1 through 7, which were received without objection. The Applicant testified on his own behalf and submitted Exhibits (AppXs) A through C, without objection. DOHA received the transcript of the hearing (TR) on March 2, 2010. The record closed on February 22, 2010. 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, the Applicant admitted the factual allegations of the one Subparagraph of the SOR, with explanation. He also provided additional information to support his request for eligibility for a security clearance.

Financial Considerations

The Applicant comes from a long line of military families. (TR at page 22 line 5 to page 23 line 6, and at page 27 line 10 to page 28 line 8.) He served on active duty with the U.S. Army for four years. (*Id.*) In 2005, the Applicant lost his civilian job, as the “Fire Alarms and Fire Inspections” business he worked for went out of business. (TR at page 30 lines 1~14). This caused the Applicant’s alleged financial difficulties.

1.a. The Applicant fell behind on his house payments; and as a result, his house was foreclosed upon in 2008. (TR at page 28 line 19 to page 29 line 25, and at page 30 line 19 to page 33 line 5). It is alleged that the Applicant owes \$48,000, as the result of a second mortgage being taken out on the foreclosed house. This “loan was sold four times”; and despite his best efforts, the Applicant was unable ascertain who was the creditor. (TR at page 30 line 19 to page 33 line 5). Finally, in December of 2009, the Applicant was able to contact the creditor. (TR at page 23 line 6 to page 26 line 3.) In December this debt was settled in full for \$8,500, to the satisfaction of the creditor, as evidenced by correspondence with the creditor. (*Id.*, and AppX A). Furthermore, this debt has been removed from the Applicant’s most recent February 2010 credit report. (AppX C.)

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 commonsense decision. According to 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. 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 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. The Applicant suffered a foreclosure; and as a result, owed \$48,000 on a second mortgage.

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 . . .), 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.”* Through no fault of his own, the Applicant lost his job, which caused his financial difficulties. He has now settled the second mortgage debt that was of concern to the Government. He has no other past due 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. Under Paragraph 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 one of his colleagues, who has written a letter on his behalf. (AppX B.)

The Administrative Judge should also 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.

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

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