



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-10596
)	
Applicant for Security Clearance)	

Appearances

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

March 8, 2010

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on May 12, 2008. On June 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines E and 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 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.

The Applicant acknowledged receipt of the SOR on June 16, 2009. He answered (Answer) the SOR in writing on July 11, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on July 13, 2009, and I received the case assignment on August 5, 2009. DOHA issued a notice of hearing on August 12, 2009, and I convened the hearing as scheduled on September 15, 2009.

The Government offered Exhibits (GXs) 1 through 8, which were received without objection. The Applicant testified on his own behalf and submitted Exhibits (AppXs) A through D, without objection. DOHA received the transcript of the hearing (TR) on September 23, 2009. I granted the Applicant's request to keep the record open until October 13, 2009, to submit additional matters. On October 8, 2009, he submitted Exhibit E, without objection. As the undersigned had jury duty on October 13th and 14th, the record closed on October 15, 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, the Applicant admitted the factual allegations in Subparagraphs 1.a.~1.k., and 1.m. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.l., 1.n.~1.p., and 2.a. of the SOR.

Financial Considerations

The Applicant and his former spouse separated in 2001 and were divorced in 2003 (TR at page 30 line 17 to page 31 line 24, and at page 77 line 15 to page 78 line 20). During the period of their separation, unbeknownst to the Applicant, his former spouse incurred additional debt, as she handled their finances (*Id*). This caused much of the Applicant's financial difficulties. He has since engaged the services of a debt consolidation service (DCS); and through their auspices, has addressed many of his past due debts. Furthermore, his current spouse is handling their financial situation, and is doing so in a responsible manner.

1.a. The first debt is to Creditor A in the amount of about \$146. The Applicant has paid this debt, as evidenced by correspondence with legal counsel, representing the creditor (TR at page 65 lines 7~23, and AppX E at Encl 5).

1.b. The second debt is to Creditor B in the amount of about \$1,209. The Applicant avers that his spouse will address this debt, and there is documentation to support that she is in contact with legal counsel for the creditor (TR at page 35 line 18 to page 36 line 13, and AppX A at page 4).

1.c. The third debt is to Creditor C in the amount of about \$2,328. The Applicant is paying this debt through his DCS, as evidenced by documentation from his DCS and from the creditor (TR at page 67 lines 13~22, AppX C at pages 4, and 8~9, and AppX E at Encl 9).

1.d. and 1.e. The fourth and fifth debts are to Creditor D in an amount totaling about \$4,670. The Applicant has settled and paid these debts, as evidenced by correspondence with the successor creditor to this debt (TR at page 42 line 19 to page 43 line 12, and AppX E at Encls 2 and 12).

1.f. and 1.m. The sixth and thirteenth debts are one and the same debt, to Creditor F in an amount totaling about \$887. The Applicant has settled and paid this debt, as evidenced by correspondence with the successor creditor to this debt (TR at page 68 line 25 to page 70 line 16, and AppX D at pages 3~5).

1.g. The seventh debt is to Creditor G in the amount of about \$122. The Applicant is paying this debt through his DCS, as evidenced by documentation from his DCS and from the creditor (TR at page 70 line 19 to page 71 line 5, AppX C at pages 4, and 8~9, and AppX T at Encl 10).

1.h. The eighth debt is to Creditor H in the amount of about \$14,236. The Applicant has settled and paid this debt, as evidenced by correspondence with the creditor (TR at page 44 line 13 to page 45 line 14, and AppX E at Encl 3).

1.i. The ninth debt is to Creditor I in the amount of about \$230. The Applicant is paying this debt through his DCS, as evidenced by documentation from his DCS (TR at page 45 lines 15~23, and AppX C at pages 4, and 8~9).

1.j. and 1.n. The tenth and fourteenth debts are one and the same debt, to Creditor J in an amount totaling about \$108. The Applicant is paying this debt through his DCS, as evidenced by documentation from his DCS and from the creditor (TR at page 71 line 8 to page 72 line 3, AppX C at pages 4, and 8~9, and AppX T at Encl 13).

1.k. The eleventh debt is to Creditor K in the amount of about \$1,658. The Applicant is paying this debt through his DCS, as evidenced by documentation from his DCS and from the creditor (TR at page 48 line 10 to page 49 line 1, AppX C at pages 4, and 8~9, and AppX T at Encl 13).

1.l. The twelfth debt is to Creditor L in the amount of about \$226. The Applicant has repeatedly and consistently disputed this debt as not being his (TR at page 49 lines 2~19, and Answer at page 1).

1.m. and 1.n. have already been discussed, above.

1.o. The fifteenth debt is to Creditor O in the amount of about \$7,174. The Applicant has paid this debt, as evidenced by correspondence with the creditor (TR at page 72 line 4 to page 73 line 22, and AppX E at Encl 4).

1.p. The last debt is to Creditor P in the amount of about \$906. The Applicant has repeatedly and consistently disputed this debt as not being his (TR at page 74 lines 1~19, and Answer at page 2).

Personal Conduct

2.a. The Applicant was less than candid when he answered Section 28 on his May 2008 e-QIP (TR at page 32 line 7 to page 34 line 25, and GX 1 at page 39). He

checked the “No” boxes, which asks if he has any debts more than 90 or 180 days past due, in the last seven years (GX 1 at page 39). He answered these questions falsely, as he was “scared of losing . . . [his] clearance” (TR at page 32 line 7 to page 34 line 25). 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 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 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 had significant past due debts that he had 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(b) applies 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.”* Here, the Applicant’s former spouse, unbeknownst to the Applicant, incurred much of his past due debt, particularly during the two year period of their legal separation. Subparagraph 20(d) applies where the evidence shows *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Except for two debts that he has consistently disputed as not being his, the Applicant has addressed all of the other alleged past debts through debt consolidation, settlement or payment.

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 admits he falsified his e-QIP for fear of losing his clearance.

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 AG 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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. His manager speaks most highly of the Applicant (AppX E at Encl 1). However, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For 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
Subparagraphs 1.a.~1.p.:	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