



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-10613
)	
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 February 20, 2006. On May 20, 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 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 30, 2009. He answered the SOR in writing on July 6, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on July 9, 2009, and I received the case assignment on July 31, 2009. DOHA issued a notice of hearing on August 5, 2009, and I convened the hearing as scheduled on September 17, 2009. The

Government offered Exhibits (GXs) 1 through 9, which were received by way of stipulation. The Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on September 25, 2009. I granted the Applicant's request to keep the record open until October 15, 2009, to submit additional matters. On October 8th and 14th, 2009, he submitted, through Department Counsel, Exhibits (AppXs) A and B, without objection. The record closed on October 19, 2009, on receipt of AppXs from Department Counsel. 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 all of the factual allegations of the SOR, without explanations.

The Applicant was unemployed or underemployed from 2001 until 2006, when he obtained his present employment (TR at page 15 line 21 to page 16 line 6). This caused the Applicant's current financial difficulties (TR at page 17 line 20 to page 18 line 8, and at page 24 line 12 to page 28 line 14). He avers that he has "about \$100,000 equity in . . . [his] house," and "about \$80,000 access to cash in banks and 401(k)s" (TR at page 19 lines 3~5, and at page 36 lines 6~23). Most recently, he and his spouse "are engaged in a Federally sponsored Loan Modification process and have retained Professional services to expedite the process" (AppX A at page 1).

1.a.~1.r. The Applicant admittedly owes about \$72,642 in past due debts to 13 different creditors (TR at page 22 line 7 to page 24 line 11, and GX 4 and 5).¹ The Applicant is unsure of the origin of many of these debts, and has done nothing, apart from looking at a loan modification program, to address his debts (*Id.*, and TR at page 20 line 18 to page 21 line 7). Of particular note is the fact that the last four debts alleged in Subparagraphs 1.o.~1.r. of the SOR total only about \$430, yet the Applicant has done nothing of any substance to address them.

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

¹The debts found in Subparagraph 1.a. and 1.b. are to the same creditor. The debts found in Subparagraphs 1.e. and 1.j. are to another creditor, and the debts found in Subparagraphs 1.o.~1.q. are yet to another creditor.

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 incurred his past due indebtedness during an extended period of unemployment or underemployment.

The Mitigating Condition found in Subparagraph 20(b) is applicable where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment . . .).”* However, Subparagraph 20(d) under the Mitigating Conditions is not applicable, as it applies where the evidence shows *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Here, the Applicant has done little to address the alleged past due debts. They are still outstanding despite his considerable net worth, and he has only started to address them through a loan modification program, with unclear results, if any.

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.

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. Here, he has the unqualified support of his Supervisor, and of his Team Lead (TR at page 22 line 14 to page 25 line 12, and AppX B). However, 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.~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