



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-01306
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: Robert L. Freeman, Esquire

February 24, 2010

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on October 17, 2008. On June 18, 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 July 3, 2009. He answered the SOR in writing on July 8, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on July 13, 2009, and I received the case assignment on July 31, 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 9, which were received without objection. The Applicant testified on his own behalf, as did his Supervisor, and submitted Exhibits (AppXs) A and B, 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 13, 2009, he submitted Exhibits C through L, without objection. As the undersigned had jury duty on October 13 and 14, 2009, 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 granted.

Findings of Fact

In his Answer to the SOR, the Applicant admitted the factual allegations in all of the allegations of SOR, with explanations.

The Applicant is retired from the Navy, and during his periods of deployment, his former spouse was tasked with handling their bills (TR at page 27 line 9 to page 31 line 8, at page 75 line 24 to page 76 line 10, and at page 88 lines 12~23). For the most part, she did not pay their debts in a timely fashion, but rather gambled away much of their income (*Id*). During their two year period of a legal separation, pending their divorce in November of 2003, unbeknownst to the Applicant, she continued to run up bills and acquire new debt in the Applicant's name (TR at page 27 line 9 to page 31 line 8, at page 75 line 24 to page 76 line 10, and at page 88 lines 12~23, and GX 1 at page 18). This conduct resulted in the Applicant's current financial difficulties.

1.z. In May of 2000, the Applicant's debts were discharged as a result of a Chapter 7 bankruptcy (TR at page 48 line 6~8, at page 29 line 11 to page 30 line 14, and GX 9). Subsequent to this bankruptcy, however, further past due indebtedness was incurred.

1.a. This debt is to Creditor A in the amount of about \$147. The Applicant has paid this debt, as evidenced by the most recent September 2009 credit report (CR) (TR at page 32 lines 11~20, at page 34 lines 9~22, and AppX A at page 19).

1.b. This debt is to Creditor B in the amount of about \$512. The Applicant has also paid this debt, as evidenced by the most recent September 2009 CR (TR at page 34 line 23 to page 35 line 7, and AppX A at page 18).

1.c. This debt is to Creditor C in the amount of about \$451. The Applicant successfully disputed this debt as having been satisfied; and as such, it does not appear on his most recent September 2009 CR (TR at page 35 line 8 to page 36 line 14, at page 80 line 4 to page 81 line 23, and AppX A).

1.d. This debt is to Creditor D in the amount of about \$790. The Applicant has "paid" this debt, as evidenced by correspondence from the successor creditor to this debt (TR at page 36 line 14 to page 37 line 3, and AppX D).

1.e. This debt is to Creditor E in the amount of about \$1,039. This medical bill has been “withdrawn” by the creditor, as it was paid by the Applicant’s secondary insurance carrier, as evidenced by correspondence from the creditor (TR at page 37 lines 5~13, at page 69 line 18 to page 71 line 24, and AppX E).

1.f. This debt is to Creditor F in the amount of about \$223. This medical bill has also been “withdrawn” by the creditor, as it was paid by the Applicant’s secondary insurance carrier, as evidenced by correspondence from the creditor (TR at page 37 line 15 to page 38 line 17, at page 81 line 24 to page 83 line 12, and AppX F).

1.g. This debt is to Creditor G in the amount of about \$411. The Applicant has paid this debt, as evidenced by the most recent September 2009 CR (TR at page 38 line 18 to page 39 line 4, at page 72 line 1 to page 74 line 3, and AppX A at pages 19~20).

1.h. This debt is to Creditor H in the amount of about \$53. The Applicant successfully disputed this debt as having been satisfied; and as such, it does not appear on his most recent September 2009 CR (TR at page 39 lines 5~16, and AppX A).

1.i. This debt is to Creditor I in the amount of about \$877. The Applicant has “paid in full” this debt, as evidenced by correspondence from the creditor (TR at page 39 line 17 to page 40 line 4, at page 76 line 11 to page 77 line 8, and AppX G).

1.j. This debt is to Creditor J in the amount of about \$166. The Applicant has paid this debt, as evidenced by a most recent September 2009 CR (TR at page 40 lines 9~19, and AppX A at page 14).

1.k. This debt is to Creditor K in the amount of about \$964. The Applicant successfully disputed this debt as having been satisfied; and as such, it does not appear on his most recent September 2009 CR (TR at page 40 line 20 to page 41 line 21, at page 83 lines 12~23, and AppX A).

1.l. This debt is to Creditor L in the amount of about \$6,531. The Applicant has begun to make monthly payments of \$500 towards this debt, as evidenced by the most recent September 2009 CR (TR at page 41 line 24 to page 43 line 5, at page 66 line 11 to page 69 line 17, and AppX A at page 16).

1.m. This debt is to Creditor M in the amount of about \$593. The Applicant has “paid in full” this debt, as evidenced by correspondence from the creditor (TR at page 43 lines 6~13, and AppX H).

1.n. This debt is to Creditor N in the amount of about \$438. The Applicant successfully disputed this debt; and as such, it does not appear on his most recent September 2009 CR (TR at page 43 line 15 to page 44 line 6, at page 83 line 24 to page 84 line 10, and AppX A).

1.o. This debt is to Creditor O in the amount of about \$117. The Applicant has paid this debt, as evidenced by the most recent September 2009 CR (TR at page 44 lines 7~18, at page 84 line 11 to page 85 line 2, and AppX A at page 12).

1.p., 1.q., and 1.r. These debts are to Creditor P in an amount totaling about \$296. The Applicant has paid these water bills of his former spouse; and as such, they do not appear on his most recent September 2009 CR (TR at page 44 line 19 to page 45 line 9, and AppX A).

1.s. This debt is to Creditor S in the amount of about \$65. The Applicant has paid this debt, as evidenced by correspondence from a credit reporting service (TR at page 45 lines 7~14, at page 50 lines 13~17, and AppX I).

1.t. This debt is to Creditor T in the amount of about \$615. The Applicant disputes this debt as not being his, and avers credibly that, in speaking with the creditor, they have no record of this debt (TR at page 45 line 15 to page 46 line 13, at page 77 line 10 to page 79 line 24). The Appellant's credibility is attested to by his Supervisor (TR at page 22 line 14 to page 25 line 12).

1.u. and 1.v. These debts are to Creditor U in an amount totaling about \$557. These medical bills have been "removed" from the Appellant's most recent CR, as they were paid by the Applicant's secondary insurance carrier, as evidenced by that September 2009 CR (TR at page 48 line 21 to page 49 line 25, at page 85 line 3 to page 86 line 15, and AppX A at pages 16 and 17).

1.w. This debt is to Creditor W in the amount of about \$1,232. The Applicant successfully disputed this debt; and as such, it does not appear on his most recent September 2009 CR (TR at page 48 lines 9~20, and AppX A).

1.x. This debt is to Creditor X in the amount of about \$1,712. The Applicant successfully disputed this debt; and as such, it does not appear on his most recent September 2009 CR (TR at page 46 line 14 to page 47 line 2, at page 86 line 16 to page 87 line 10, and AppX A).

1.y. This debt is to Creditor Y in the amount of about \$1,091. The Applicant has paid this debt, which is listed as current and closed with a "0" balance, as evidenced by the most recent September 2009 CR (TR at page 47 lines 14~23, and AppX A at page 5).

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. During his marriage, and during his legal separation from his, now, former spouse, the Applicant was saddled with her delinquent debts.

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., . . . divorce or separation), 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."* The Appellant's former spouse would rather gamble than pay their debts; and as a result, he became responsible for the past due indebtedness. The Applicant, with little help from his former spouse, has made a good faith effort to address all of the alleged past due debts. In fact, he has paid, or resolved, all of the alleged 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 his Supervisor, and of his Team Lead (TR at page 22 line 14 to page 25 line 12, and 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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant

Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	For Applicant
Subparagraph 1.x:	For Applicant
Subparagraph 1.y:	For Applicant
Subparagraph 1.z:	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