



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



In the matter of:)	
)	
)	ISCR Case No. 09-01526
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

April 26, 2010

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on June 26, 2008. On September 30, 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 on October 16, 2009. He answered the SOR in writing that same day, and subsequently requested a hearing before an Administrative Judge. DOHA received the request on November 24, 2009, and I received the case assignment the same day. DOHA issued a notice of hearing on December 7, 2009, and I convened the hearing as scheduled on January 26, 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 H, without objection. DOHA received the transcript of the hearing (TR) on February 2, 2010. I granted the Applicant's request to keep the record open until February 26, 2010, to submit additional matters. He submitted nothing. The record closed on February 26, 2010. 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 admits the factual allegations in all three Paragraphs of the SOR, with explanations.

Financial Considerations

The Applicant worked for a company that provided security systems for "both commercial, [and] residential security applications." (TR at page 25 lines 11~23.) 50 percent of his income was "guaranteed in salary and 50 percent" was based on sales. (TR at page 10~16.) As a result, the collapse of the real estate market caused the Applicant's current financial difficulties.

1.a. The Applicant filed for the protection of a Chapter 7 Bankruptcy in September of 1999. (GX 4 at page 5.) As a result of this filing, the Applicant's debts were discharged in December of 1999. (*Id.*) This bankruptcy was caused by the Applicant acquiring joint liabilities with his ex-girl friend; who ran up their debts, and left the Applicant with their excessive, joint indebtedness. (TR at page 61 line 2 to page 63 line 18).

1.b. and 1.c. As a result of the recent collapse of the real estate market, the Applicant primary residence was foreclosed by Creditor #1, to which the Applicant owes about \$759,833 on his first mortgage. (TR at page 48 line 17 to page 50 line 10.) The Applicant also owes about \$46,557 to Creditor #2 as the result of a second mortgage. (TR at page 52 lines 5~17.) Despite the Applicant's best efforts, he could not keep up with his house payments. (TR at page 48 line 17 to page 50 line 10.) However, the Applicant has offered nothing to show that his primary mortgage is covered by California's Anti-Deficiency Act. (See California Code of Civil Procedure, Sections 580a.~580d.) Furthermore, he has offered nothing to show that he has addressed his second mortgage. I find that both debts are still outstanding.

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. In 1999, the Appellant went bankrupt pursuant to Chapter 7 of the Bankruptcy Code. More recently, the Applicant has defaulted on his primary and secondary mortgage loans; and as a result, has in excess of \$800,000 in past due indebtedness.

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, a business downturn . . .), and the individual acted responsibly under the circumstances."* With the collapse of the real estate market, the Applicant's income was drastically reduced; and as such, he could not keep on his house payments. However, Subparagraph 20(d) under the Mitigating Conditions is not applicable, as there is no evidence to show *"the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."* Here, the Applicant has offered nothing to show that he has addressed, or is excused from, his admitted past due debts. They are still outstanding.

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 those with whom he works. (AppXs E~H.) 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.	For Applicant
Subparagraphs 1.b. & 1.c.:	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