



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-02669
)	
Applicant for Security Clearance)	

Appearances

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

June 15, 2010

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 7, 2008. On October 28, 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 3, 2009. He answered the SOR in writing on November 19, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on November 23, 2009, and I received the case assignment on January 21, 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, as did his Security Manager, and submitted Exhibits (AppXs) A through E, which were received without objection. DOHA received the transcript of the hearing (TR) on March 4, 2010. I granted the Applicant's two requests, one at his hearing and one subsequent to his hearing, to keep the record open until April 22, 2010, to submit additional matters. On March 22, 2010, and again on April 22, 2010, he submitted AppXs F and G, which were received without objection. The record closed on April 22, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding Subparagraph 1.m., alleging that the Applicant "is indebted to the Federal Government for a tax lien in the approximate amount of \$39,000, and that he is making voluntary payments." (TR at page 50 lines 9~20.) There being no objection, the SOR was so amended.

Findings of Fact

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

Guideline F - Financial Considerations

The Applicant served in the U.S. Marine Corps during the Viet Nam War, from 1969 until his honorable discharge in 1975. (TR at page 28 line 19 to page 30 line 8.) After leaving the Marine Corps, he worked for a high tech firm for 31 years. (TR at page 26 line 4 to page 27 line 2.) He took an early retirement in 2006, took monies from his company pension, and gave each of his two daughters \$60,000. (*Id.*, and at page 47 line 6 to page 48 line 2.) It soon became obvious, however, that his remaining pension was not enough to cover his monthly expenses. (TR at page 35 line 13 to page 36 line 15.)

1.a., 1.b., 1.l., and 1.m. Although the Applicant had his income taxes prepared professionally when he took the \$120,000 advance from his pension, he still owed significant back taxes. (TR at page 36 line 16 to page 39 line 4.) As a result, his wages are being garnish at a rate of \$770 each month to pay a \$51,805 state tax bill. (TR at page 27 line 24 to page 28 line 3, at page 49 line 24 to page 50 line 1.) This is evidenced by documentation from the Applicant's employer, and from the state taxing authority. (AppX D.) The Applicant is also making monthly payments of \$50 towards his Federal tax debt, to the satisfaction of the Internal Revenue Service (IRS). (AppX D and F.) This is evidenced by documentation from the IRS. (*Id.*)

1.c. The Applicant is indebted to Creditor C in the amount of about \$8,870. (GX 7 at page 2.) In July of 2009, the Applicant retained the services of a bankruptcy attorney for purpose of filing a Chapter 7 Bankruptcy, as evidenced by documentation from that Attorney. (AppX E.) This Bankruptcy was filed in February of 2010, as evidenced by documentation from the U.S. Bankruptcy Court. (AppX G at page 2.) The debt to Creditor C is included in the Bankruptcy filing, as evidenced by the Bankruptcy's Schedule F. (TR at page 39 line 5 to page 40 line 15, and AppX G at page 26.)

1.d. The Applicant is indebted to Creditor D in the amount of about \$582. (GX 7 at pages 1~2.) The debt to Creditor D is included in the Bankruptcy filing, as evidenced by the Bankruptcy's Schedule F. (TR at page 40 line 15 to page 41 line 4, and AppX G at page 25.)

1.e.~1.g. The Applicant is indebted to Creditor E in an amount totaling about \$18,607. (GX 7 at page 2.) The debts to Creditor E are included in the Bankruptcy filing, as evidenced by the Bankruptcy's Schedule F. (TR at page 41 line 5 to page 42 line 1, and AppX G at page 27.)

1.h. The Applicant is indebted to Creditor H in the amount of about \$2,897. (GX 7 at page 2.) The debt to Creditor H is included in the Bankruptcy filing, as evidenced by the Bankruptcy's Schedule F. (TR at page 42 line 2 to page 44 line 5, and AppX G at page 26.)

1.i. The Applicant is indebted to Creditor I in the amount of about \$6,238. (GX 7 at page 3.) The debt to Creditor I is included in the Bankruptcy filing, as evidenced by the Bankruptcy's Schedule F. (TR at page 44 line 12 to page 45 line 12, and AppX G at page 25.)

1.j. The Applicant is indebted to Creditor J in the amount of about \$3,351. (GX 7 at page 3.) The debt to Creditor J is included in the Bankruptcy filing, as evidenced by the Bankruptcy's Schedule F. (TR at page 45 lines 13~24, at page 46 line 25 to page 47 line 4, and AppX G at page 29.)

1.k. The Applicant is indebted to Creditor K in the amount of about \$5,836. (GX 7 at page 3.) The debt to Creditor K is included in the Bankruptcy filing, as evidenced by the Bankruptcy's Schedule K. (TR at page 45 line 25 to page 46 line 14, and AppX G at page 28.)

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 owes a significant amount in past due indebtedness, and is paying back taxes.

These are 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."* The Applicant took an early retirement; and as a result, miscalculated his future financial needs. 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 Applicant is addressing his Federal and state back taxes by making monthly payments to the satisfaction of those taxing authorities. He has also filed for the protection of a Chapter 7 Bankruptcy, having retained an Attorney for that purpose, three months prior to the issuance of the SOR. All of the alleged past due debts are included in his February 2010 Bankruptcy filing.

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, of his Security Manager, and of his Base Manager, all of whom attest to his trustworthiness. (AppX A.)

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. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For 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.~1.l: 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