



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



In the matter of:)
)
) ISCR Case No. 09-03164
SSN:)
)
Applicant for Security Clearance)

Appearances

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

June 14, 2010

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on April 28, 2008. On October 9, 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 27, 2009. He answered the SOR in writing on November 5, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on November 9, 2009, and I received the case assignment on December 7, 2009. DOHA initially issued a notice of hearing on December 7, 2009, for a hearing on January 13, 2010. However, due to

transportation difficulties the Applicant was unable to attend; and as a result, it was rescheduled and heard February 22, 2010, at a venue closer to the 76 year old Applicant. The Government offered Exhibits (GXs) 1 through 8, which were received without objection. The Applicant testified on his own behalf, as did his wife of 26 years. DOHA received the transcript of the hearing (TR) on March 8, 2010. I granted the Applicant's two requests, one at the hearing and the other one subsequent to the hearing, to keep the record open until April 22, 2010, to submit additional matters. On March 22, 2010, April 8, 2010, and April 23, 2010 he submitted Exhibits (AppXs) A, B, and C, respectively, which were received without objection. The record closed on April 23, 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 admitted the factual allegations in Subparagraphs 1.a., 1.f., and 1.g. of the SOR, without explanations. He denied the factual allegations in Subparagraphs 1.b.~1.e. of the SOR.

Guideline F - Financial Considerations

1.a. The Applicant is a Viet Nam War Veteran, who had difficulty finding employment upon his discharge from the military in 1968. (TR at page 22 line 20 to page 27 line 21.) For example, from 1992 until 2002, he was either unemployed or under employed, which caused him to file for the protection of a Chapter 7 Bankruptcy in July of 2002. (TR at page 41 line 16 to page 42 line 11, and GX 2.) His debts were discharged in November of that year. (*Id.*)

1.b. The Applicant is indebted to Creditor B in the amount of about \$5,003. (GX 8 at page 1.) The Applicant now admits this credit card debt, and by a writing dated April 23, 2010, avers, "I have decided to file Bankruptcy in my case regarding base clearance case #0903164." (TR at page 42 line 12 to page 43 line 11, and AppX C.)

1.c. The Applicant is indebted to Creditor C in the amount of about \$1,287. (GX 5 at page 13.) The Applicant now admits this debt, and intends to include it in a future Bankruptcy. (TR at page 43 line 13 to page 44 line 15, and AppX C.)

1.d. The Applicant is indebted to Creditor D in the amount of about \$2,593. (GX 8 at page 2.) The Applicant now admits this debt, and intends to include it in a future Bankruptcy. (TR at page 44 lines 17~24, and AppX C.)

1.e. The Applicant is indebted to Creditor E in the amount of about \$6,355. (GX 8 at page 2.) The Applicant now admits this debt, and intends to include it in a future Bankruptcy. (TR at page 44 line 25 to page 45 line 8, and AppX C.)

1.f. The Applicant is indebted to Creditor F in the amount of about \$9,304. (GX 8 at page 3.) The Applicant admits this debt, and intends to include it in a future Bankruptcy. (TR at page 45 lines 9~16, at page 46 lines 9~11, and AppX C.)

1.g. The Applicant is indebted to Creditor G in the amount of about \$1,782. (GX 8 at page 3.) The Applicant admits this debt, and intends to include it in a future Bankruptcy. (TR at page 45 line 18 to page 46 line 16, and AppX C.)

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 has significant past due debts, which he is unable or unwilling to resolve.

I can find no countervailing Mitigation Condition that is applicable. 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, . . .), and the individual acted responsibly under the circumstances.”* Here, although the Applicant was unemployed or under employed prior to his 2002 Bankruptcy filing, since then he has accumulated additional past due debt. Now, at the 12th hour, two months after his hearing, he is again contemplating Bankruptcy. This is too little, too late.

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 and know him in the community. (AppXs A and B.) He also served his country honorably in the military. 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.g.	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