



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



In the matter of:)	
)	
)	ISCR Case No. 09-05799
)	
)	
Applicant for Security Clearance)	

Appearances

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

February 29, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 25, 2009. On April 4, 2011, 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), effective within the Department of Defense after September 1, 2006.

The Applicant acknowledged receipt of the SOR on May 12, 2011. He answered the SOR in writing on May 25, 2011, and requested a hearing before an Administrative Judge. Department Counsel issued a Ready to Proceed on August 30, 2011, and I received the case assignment on September 1, 2011. DOHA issued a notice of hearing on November 23, 2011, and I convened the hearing as scheduled on January 12, 2012. The Government offered Exhibits (GXs) 1 through 6, which were received without

objection. The Applicant testified on his own behalf, as did his wife. DOHA received the transcript of the hearing (TR) on January 20, 2012. I granted the Applicant's requests, one made at his hearing and the other after his hearing, to keep the record open until January 30, 2012, to submit additional matters. On January 25, 2011, he submitted Exhibit (AppX) A, which was received without objection. The record closed on January 30, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, the Applicant admitted in part, and denied in part, the two factual allegations in Subparagraphs 1.a., and 1.b.. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

1.a. It is alleged that the Applicant is past due on a satellite TV debt in the amount of about \$70. This past due debt was an oversight; and has been paid, as evidenced by the Government's most recent January 2012 Credit Report (CR). (TR at page 44 line 17 to page 45 line 14, and GX 6.)

1.b. In 2001, the Applicant was injured; and as a result, could not work, which resulted in a "\$40,000 to \$50,000" reduction in their family income. (TR at page 22 line 13 to page 23 line 14.) Furthermore, the Applicant's brother had passed away, and his five children were being cared for by the Applicant's mother. (TR at page 23 lines 15~20.) In 2002, they all joined the Applicant's household. (*Id.*) Soon thereafter, the Applicant's mother-in-law, together with a grandchild she was taking care of, joined the household. (TR at page 23 line 20~25.) When the Applicant's three children were added to this equation, there were "12 [people living] in a four-bedroom home." (TR at page 23 line 25 to page 24 line 2.) This resulted in the extended family purchasing a larger home. (TR at page 24 lines 2~8.) The Applicant's wife then became unemployed for three months, which resulted in their getting behind three months on their mortgage payments. (TR at page 25 line 18 to page 26 line 15.)

Their mortgage company threatened foreclosure, so the Applicant and his wife sought the help of a person who represented that he could help them with a loan modification. (TR at page 26 line 16 to page 27 line 13.) They paid this person \$1,400 a month for "16 or 18 months," but he turned out to be a swindler; i.e., he took their money and did nothing. (*Id.*) As a result, it is alleged that they are past due on their mortgage in the amount of about \$58,000. They eventually worked out a short sale with the lender, and their house was sold in April of 2011. (TR at page 24 line 12 to page 30 line 23, at page 34 line 23 to page 38 line 17, and AppX A at pages 1~3.) As a result of the short sale, the Applicant owes nothing to the mortgage holder, as evidenced by the title company's Closing Statement. (AppX A at pages 1~3.) Furthermore, this debt does not appear on the Government's most recent January 2012 CR. (GX 6.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 AG ¶ 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. AG ¶ 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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, and that are applicable in this case. 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.

However, the countervailing second and fourth Mitigation Conditions are clearly applicable here. 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, . . . or a death, . . .), and the individual acted responsibly under the circumstances.*" Here, the Applicant's debts are related to his and his wife's reduction of income, and to the untimely death of his brother. He has now addressed the two alleged past due debts. Subparagraph 20(d) is applicable where, "*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*" The Applicant owes nothing on the mortgage, and has paid the other past due debt.

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. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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
Subparagraphs 1.a. and 1.b.	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge