



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-05823
)	
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 June 10, 2009. On September 24, 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 1, 2009. He answered the SOR in writing on October 5, 2009, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter. The case was originally assigned to another Judge on November 2, 2009, but the case was reassigned to the undersigned on December 1, 2010. DOHA issued a notice of hearing

on December 7, 2009, and I convened the hearing as scheduled on January 27, 2010. The Government offered Exhibits (GXs) 1 through 4, which were received without objection. The Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on February 2, 2010. I granted the Applicant's two requests, one made at his hearing and the other made subsequent to the hearing, to keep the record open until April 1, 2010, to submit additional matters. On March 31, 2010, he submitted Exhibit (AppX A) through Department Counsel, who forwarded it on Saturday, April 3, 2010, without raising any objection. The record closed on Monday, April 5, 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.c., 1.e., and 1.f. of the SOR, with explanations. He denied the factual allegation in Subparagraph 1.d. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

The Applicant's served honorably on active duty for five years with the Navy. (TR at page 19 line 22 to page 22 line 14.) His financial difficulties were caused, in part, by brief periods of legal separation from his wife; but also, in part, due to their living beyond their means. (TR at page 30 lines 5~22, and at page 34 line 7 to page 35 line 2.) Most recently, on March 31, 2010, the Applicant avers, in part, the following:

My wife and I are filling [*sic*] for Bankruptcy Chapter 7. Unfortunately we have no other option. . . . [We] are waiting on some paperwork from our attorney so we can officially file the [C]hapter 7. We have passed the means test, made all payments, and have given them all documentation they have requested. The documents will be ready any day now. (AppX A at page 1.)

1.a. The Applicant admits that he is indebted to Creditor A on a credit card in the amount of about \$813. (TR at page 24 line 15 to page 25 line 11, and GX 4 at page 1.) As of yet, there is no evidence that this admitted debt will be included in the Applicant's Chapter 7 filing.

1.b. The Applicant admits that he is indebted to Creditor B in the amount of about \$328. (TR at page 25 line 12 to page 26 line 15, and GX 4 at page 1.) As of yet, there is no evidence that this admitted debt will be included in the Applicant's Chapter 7 filing.

1.c. The Applicant admits that he is indebted to Creditor C in the amount of about \$100. (TR at page 26 line 16 to page 28 line 2, and GX 4 at page 2.) The

Applicant avers that he is paying this debt by way of allotment, but offers no documentation in this regard. (*Id.*)

1.d. The Applicant denies that he is indebted to Creditor D in the amount of about \$14,000, however, it does appear on credit reports for June of 2009, September of 2009, and January of 2010. (GX 2 at page 6, GX 3 at page 2, and GX 4 at page 2.) I find that this past due debt is the Applicant's, and has not been paid.

1.e. The Applicant admits that he is indebted to Creditor E in the amount of about \$20,000. (TR at page 30 line 23 to page 31 line 9, at page 44 line 23 to page 45 line 2, and GX 4 at page 2.) The Applicant avers that he is making monthly payments of \$243 towards this credit card debt, but offers no documentation in this regard. (*Id.*)

1.f. The Applicant admits that he is indebted to Creditor F in the amount of about \$157,000. (TR at page 31 line 10 to page 38 line 2, at page 34 line 2 to page 44 line 22, at page 45 line 23 to page 46 line 5, and GX 4 at page 2.) This debt is the result of the foreclosure on a second mortgage. (*Id.*) As of yet, there is no evidence that this admitted debt will be included in the Applicant's Chapter 7 filing.

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, to include foreclosure on a second mortgage.

I can find no applicable countervailing mitigating conditions. 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., . . . separation), and the individual acted responsibly under the circumstances.”* Although he attributes some of his indebtedness to brief periods of legal separation from his spouse, he also admits living beyond his means. Subparagraph 20(d) under the Mitigating Conditions is

not applicable, as there is not enough evidence to show *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Here, the Applicant avers, at the 12th hour, that he is going to file for the protection of a Chapter 7 Bankruptcy. This pending filing 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. The Applicant did serve his country honorably while in the Navy. (AppX A.) 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. In the future, if he is successful with his Bankruptcy filing; and thereafter shows fiscal responsibility, then he may be eligible for a security clearance.

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.f.	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