



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



In the matter of:)	
)	
)	ISCR Case No. 09-06745
)	
)	
Applicant for Security Clearance)	

Appearances

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

December 9, 2011

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 16, 2009. On April 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and J 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 April 18, 2011. He answered the SOR in writing on April 29, 2011, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on June 3, 2011. DOHA issued a notice of hearing on June 6, 2011, and I convened the hearing as scheduled on June 29, 2011. The Government offered Exhibits (GXs) 1 through 14, 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 July 8, 2011. I granted the Applicant's request to keep the record open until July 29, 2011, to submit additional matters. He has submitted nothing. The record closed on July 29, 2011. Based upon a review of the 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 all of the Subparagraphs of the SOR, with explanations, except he denied the allegation as set forth in Subparagraph 1.j. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

The Applicant is a retired Senior Chief Petty Officer, who served on active duty for 25 years. (TR at page 25 line 17 to page 30 line 15.) His wife is a recovering alcoholic. (TR at page 34 line 11 to page 35 line 1.) In March of 2009, their home was burgled; but as "one of . . . [their] children was involved in it," the "insurance wouldn't cover any of . . . [their] loss." (TR at page 35 line 2 to page 36 line 7.) This incident began their current financial difficulties. (*Id.*)

1.a. It is alleged that the Applicant is indebted to Creditor A in the amount of \$37. He avers that this medical debt was paid in April of 2011, which is supported by the Government's most recent credit report (CR) from June of 2011. (TR at page 37 lines 2~17, and GX 14.) This debt does not appear on the Government's most recent CR; and as such, I find that this debt is not outstanding. (GX 14.)

1.b. It is alleged that the Applicant is indebted to Creditor B in the amount of \$39. He again avers that this medical debt was paid in April of 2011, which is also supported by the Government's most recent CR from June of 2011. (TR at page 37 line 17 to page 38 line 1, and GX 14.) This debt does not appear on the Government's most recent CR; and as such, I also find that this debt is not outstanding. (GX 14.)

1.c. It is alleged that the Applicant is indebted to Creditor C in the amount of \$30. He avers that this medical debt was paid in April of 2011, which is supported by the Government's most recent CR from June of 2011. (TR at page 38 lines 2~14, and GX 14.) This debt does not appear on the Government's most recent CR; and as such, I find that this debt is not outstanding. (GX 14.)

1.d. It is alleged that the Applicant is indebted to Creditor D in the amount of \$755. He avers that this debt was paid in February of 2011 through garnishments of wages, which is supported by the Government's most recent CR from June of 2011. (TR at page 38 line 14 to page 39 line 1, and GX 14.) This debt does not appear on the Government's most recent CR; and as such, I find that this debt is not outstanding. (GX 14.)

1.e. It is alleged that the Applicant is indebted to Creditor E in the amount of \$14,856. (GX 14 at page 2.) He avers that he is trying to settle this substantial credit card debt; but despite my leaving the record open for one month, he has submitted no further evidence in this regard. (TR at page 39 line 2 to page 40 line 6.) As this debt does appear on the Government's most recent CR, I find that this debt is still outstanding. (GX 14.)

1.f. and 1.i. These two alleged debts are one and the same debt to Creditor F in the amount of \$681. (GX 14 at page 2.) The Applicant avers that he is trying to settle this cell phone debt; but despite my leaving the record open for one month, he has submitted no further evidence in this regard. (TR at page 40 line 7 to page 41 line 17, and at page 43 lines 2~11.) As this debt does appear on the Government's most recent CR, I also find that this debt is still outstanding. (GX 14.)

1.g. It is alleged that the Applicant is indebted to Creditor G in the amount of \$5,434. (GX 14 at page 2.) He avers that this substantial debt was paid in September of 2010; but despite my leaving the record open for one month, he has submitted no further evidence in this regard. (TR at page 41 line 18 to page 42 line 5.) As this debt does appear on the Government's most recent CR, I find that this debt is still outstanding. (GX 14.)

1.h. It is alleged that the Applicant is indebted to Creditor H in the amount of \$2,289. (GX 14 at page 2.) He avers that he is trying to address this foreclosure debt from a second mortgage; but despite my leaving the record open for one month, he has submitted no further evidence in this regard. (TR at page 42 lines 6~25, at page 55 line 17 to page 56 line 4.) As this debt does appear on the Government's most recent CR, I find that this debt is still outstanding. (GX 14.)

1.i. This debt has already been discussed, above.

1.j. It is alleged that the Applicant is indebted to Creditor J in the amount of \$92. He disputes this debt as not being his debt, which is supported by the Government's most recent CR from June of 2011. (TR at page 43 line 12 to page 44 line 5, and GX 14.) This debt does not appear on the Government's most recent CR; and as such, I find that this debt is not outstanding. (GX 14.)

1.k. It is alleged that the Applicant is indebted to Creditor K in the amount of \$31. He avers that this medical debt was paid in April of 2011, which is supported by the Government's most recent CR from June of 2011. (TR at page 44 lines 6~12 and GX 14.) This debt does not appear on the Government's most recent CR; and as such, I find that this debt is not outstanding. (GX 14.)

Guideline J - Criminal Conduct

The Applicant's wife had a drinking problem, and is now a recovering alcoholic. (TR at page 50 line 17 to page 52 line 14.) Her consumption of alcohol is directly related to all three allegations of Criminal Conduct, which will be discussed at length, below. (*Id.*) In this regard, the following colloquy occurred between the undersigned and the Applicant's wife:

JUDGE: During . . . these three incidents, you basically called the police and he was the one arrested, not you?

WITNESS: Yes.

JUDGE: And you were the one under the influence of alcohol?

WITNESS: Yes. . . . I learned from my mother to talk a good game when I was mad. My mother was a very violent person. (TR at page 50 line 17 to page 51 line 2.)

2.a. In September of 1988, the Applicant was arrested for, and subsequently charged with, Injury to Spouse. The Applicant's wife declined prosecution, as she avers that she orchestrated his arrest. (TR at page 45 line 19 to page 47 line 9, at page 53 lines 13~19, and at page 59 line 13 to page 60 line 7.) She stated the following in this regard: "I thought that was the normal way of life of being married and - - and I believe I got really drunk and I am pretty sure because, as normal, I probably started hitting him and he restrained me and - - and I called the police. I didn't like it and I called the police." (TR at page 46 lines 10~15.) The Applicant had not consumed alcohol prior to this incident. (TR at page 45 line 19 to page 47 line 9, at page 53 lines 13~19, and at page 59 line 13 to page 60 line 7.) I find no Criminal Conduct on the Applicant's part.

2.b. In December of 2005, the Applicant was arrested for, and subsequently charged with, Inflicting Corporal Injury on Spouse/Cohabitant, and Battery to Spouse/Cohabitant. The Applicant's wife again declined prosecution, as she avers that she also orchestrated this arrest. (TR at page 47 line 10 to page 48 line 10, at page 53 line 20 to page 55 line 9, and at page 57 line 19 to page 58 line 17.) She stated the following in this regard:

December of 2005, I believe that was another period where I was drinking. I would have bouts where I would just drink a lot. And I had a lot of issues - - a lot of anger issues and everything that I hadn't dealt with, and so I would drink to - - and my kids were in high school and not wanting me - - I wasn't feeling as needed anymore - - and I just - - I would hit the bottle hard and start fights with him and it would - - it would turn - - you know, if he didn't do what I wanted him to do, I would normally called (*sic*) the police. (TR at page 47 line 18 to page 48 line 3.)

I find no Criminal Conduct on the Applicant's part.

2.c. In October of 2007, the Applicant was arrested for, and subsequently charged with, Battery to Spouse/Cohabitant, and Wilful Cruelty to Child. (GXs 2-4.) These charges arose out of another domestic dispute with his wife, with one of their children being present. (TR at page 48 line 11 to page 50 line 6, at page 60 line 18 to page 61 line 4, and at page 65 line 10 to page 66 line 5.) The Applicant's wife again declined prosecution as to the spousal battery, but he pled guilty to the misdemeanor of an amended charge of Vandalism Under \$400. (GX 4.) The Applicant testified as follows:

No, I did not hit nobody (*sic*). No, I did not abuse anybody. And - - and like I said, I've never been - - I went to court. I pled guilty to toy vandalism because I did do that. I did pick up some toys and instead of taking 'em over to the box and drop 'em in the box, I threw 'em across the room. And I've always admitted to something when I've done it. (TR at page 65 line 23 to page 66 line 5.)

As a result of this misdemeanor conviction, the Applicant was sentenced to probation, with the imposition of any other sentence suspended for three years.

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. 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.

I can find no countervailing Mitigation Condition that is 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, . . . and the individual acted responsibly under the circumstances.*” Here, the Applicant suffered

uninsured financial loss as a result of his home being burgled, but he has failed to submit any evidence showing he has addressed the very substantial debts alleged in Subparagraphs 1.e.-1.h., which total in excess of \$23,000.

Guideline J - Criminal Conduct

Paragraph 30 of the adjudicative guidelines sets out the security concern relating to Criminal Conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The adjudicative guidelines set out certain conditions that could raise security concerns. Subparagraph 31(a) provides that "*a single serious crime or multiple lesser offenses*" may raise security concerns. The Applicant was convicted of a misdemeanor in 2007. However, this is clearly countered by the mitigating condition in Subparagraph 32(a) as "*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.*" The Applicant's misdemeanor conviction was more than three years ago.

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 questions and doubts as to Applicant's eligibility and suitability for a security clearance.

He has yet to demonstrate that he has addressed over \$23,000 in past due debts. For this reason, 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
Subparagraphs 1.a.~1.d.	For Applicant
Subparagraphs 1.e.~1.h.	Against Applicant
Subparagraphs 1.i. and 1.k.	For Applicant
Paragraph 2, Guideline j:	FOR APPLICANT
Subparagraphs 2.a.~2.c.	For 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