



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



In the matter of:)	
)	
)	ISCR Case No. 09-08360
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

February 1, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 18, 2009. On June 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 June 7, 2011. He answered the SOR in writing on June 22, 2011, and requested a hearing before an Administrative Judge. DOHA received the request on June 27, 2011, and the case was assigned to another Judge on August 10, 2011. The case was reassigned to the undersigned on September 26, 2011. DOHA had already issued a notice of hearing on September 21, 2011, and I convened the hearing as scheduled on October 25, 2011. The Government

offered Exhibits (GXs) 1 through 8, which were received without objection. The Applicant testified on his own behalf and submitted Exhibits (AppXs) A through E, which were received without objection. DOHA received the transcript of the hearing (TR) on October 28, 2011. I granted the Applicant's request to keep the record open until January 3, 2012, to submit additional matters. On January 3, 2012, he submitted Exhibit F, which was received without objection. The record closed on January 3, 2012. 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 Subparagraphs 1.a.~1.c., 1.f.~1.l., 1.n., 1.o. and 1.q. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.d., 1.e., 1.m., 1.p., 1.r., 1.s. and 2.a. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Consideration

In 2006~2007, the Applicant's wife went through a difficult pregnancy; and as a result, she could not work, which caused a significant reduction in their family income. (TR at page 30 line 13 to page 31 line 8.) She returned to work; but in 2009, the Applicant developed "a cyst," which resulted in "almost a month of not working," and another reduction in their family income. (TR at page 31 line 9 to page 33 line 14.) In 2010, his wife had another difficult pregnancy, which further affected their family income. (TR at page 33 line 15, to page 34 line 5.) After the baby was born, the Applicant "developed high cholesterol, [and] high blood pressure," which caused him to be bed ridden and further impacted his ability to work. (TR at page 34 lines 6~19.) All of the above caused the Applicant's current financial difficulties.

1.a.~1.c., 1.f.~1.l., 1.n., 1.o. and 1.q. The Applicant admits that he is indebted to 13 creditors in a past due amount totaling about \$5,533. (TR at page 41 line 13 to page 44 line 6, at page 46 line 7 to page 50 line 15, at page 51 line 10 to page 52 line 10, and at page 52 line 20 to page 53 line 1.) On December 1, 2011, the Applicant filed for the protection of a Chapter 7 Bankruptcy. (See Closing Argument and AppX F.) A "Meeting of Creditors" was held on December 28, 2011, but no creditor appeared. (*Id.*) The deadline for objections to the Applicant's discharge is on February 27, 2012, as evidenced by a document from the Bankruptcy Court. (AppX F.) As no creditor appeared at the "Meeting of Creditors," it is also most likely that no creditor will file an objection to the pending Discharge.

1.d., 1.e., 1.m., 1.p., 1.r., and 1.s. The Applicant denies that these six debts, totaling about \$13,919, are his debts. (TR at page 45 line 2 to page 46 line 6, at page 50 line 16 to page 52 line 5, at pages 52 lines 11~19, and at page 53 line 5 to page 54 line 5.) Only one of these six debts, which totals about \$1,067, appears on the Government's most recent October 2011 credit report. (GX 8.) This lends credence to

the Applicant's claim that these are not his debts. If it turns out that any or all of these debts were the Applicant's debt, they would also be covered by his December 1, 2011 Chapter 7 Bankruptcy filing.

Guideline E - Personal Conduct

2.a. The Applicant failed to disclose any of his admitted past due debts in answer to "Section 26: Financial Record" on his September 18, 2009 e-QIP. (GX 1 at pages 47~48.) The Applicant avers that he was rushed filling out the e-QIP; and as such, answered "No" to all the posited questions. (TR at page 54 line 6 to page 55 line 25, and at page 62 line 7 to page 63 line 21.) Rushed or not, I find that he should have answered "Yes" where appropriate. Furthermore, he could explain in more detail his truthful answers during any followup interview.

More recently, the Applicant avers that he disclosed his past due debts as part of the application process for "the Border Patrol." (*Id.*) Despite my leaving the record open for more than two months for the Applicant to submit this e-QIP, he has not done so. This further calls into question the Applicant's credibility as to false answers in Section 26, as alleged. I find his September 2009 responses to be willful falsifications.

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 common sense decision. According to AG 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. AG 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. Applicant had significant past due debts that he had been unable to address in a timely fashion. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Subparagraph 20(b) applies where “*the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment . . . unexpected medical emergency . . .)* and the

individual acted responsibly under the circumstances.” Here, the Applicant’s spouse had two difficult pregnancies that resulted in her not working, and the Applicant was unable to work for brief periods due to medical problems. 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 has now addressed all of his admitted past due debts through the protection of a Chapter 7 Bankruptcy. He should soon be discharged of his past due indebtedness.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 15: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”

The following Disqualifying Condition under Subparagraph 16(a) applies. It provides that the “*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . .*” may be disqualifying. I can find no countervailing Mitigating Condition here, as the Applicant could have easily answered his e-QIP honestly, even if he did not know the particulars of his debts.

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 AG 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. His Assistant Facility Security Officer manager speaks most highly of the Applicant, although it is unclear if she knew the

particulars of the Applicant's case (AppX A). The record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from his Personal Conduct.

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 J:	FOR APPLICANT
Subparagraphs 1.a.-1.s.:	For Applicant
Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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