



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



In the matter of:)	
)	
)	ISCR Case No. 10-07097
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Steve Gardella, Esquire

January 6, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 21, 2010. On May 24, 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 June 1, 2011. He answered the SOR in writing through counsel on June 16, 2011, and requested a hearing before an Administrative Judge. DOHA received the request on June 20, 2011, and it was assigned to another Judge. The case was reassigned to the undersigned on September 26, 2011. DOHA already issued a notice of hearing on September 21, 2011, and I convened the hearing as scheduled on October 26, 2011. The Government

offered Exhibits (GXs) 1 through 5, which were received without objection. The Applicant testified on his own behalf, as did his supervisor, and submitted Exhibits (AppXs) A through N, which were received without objection. DOHA received the transcript of the hearing (TR) on November 2, 2011. The record closed on November 2, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Deficiency Judgments. The request was granted. The documents were not admitted into evidence, but are included in the record.

Findings of Fact

In his Answer to the SOR, the Applicant denied the factual allegations in the three Subparagraphs of the SOR.

Guideline F - Financial Considerations

The Applicant was divorced in November of 2010. (TR at page 34 line 23 to page 37 line 3, and AppX J.) Pursuant to the divorce decree, it was ordered that their two houses, one a rental and the other their residence, be sold. (*Id.*) This is evidenced by the divorce decree. (AppX J.) As a result, both properties were sold by way of a short sale, which will be discussed under the three Subparagraphs of the SOR, below. Prior to his divorce, the Applicant had no financial difficulties. (TR at page 43 line 20 to page 44 line 3.) He has also recently taken a "credit counseling class." (TR at page 45 line 16 to page 46 line 19, and AppX I.)

1.a. and 1.b. It is alleged that the Applicant is past due on his rental property in the amount of about \$13,996, on its first mortgage, to Creditor B; and in the amount of about \$2,530, on its second mortgage, to Creditor A. (GX 5 at pages 1 and 2.) Both of these mortgages have been paid, as evidenced by the escrow documents. (TR at page 37 line 21 to page 38 line 15, at page 39 lines 13~18, at page 40 line 11 to page 42 line 7, and AppX G at page 3.)

1.c. It is alleged that the Applicant is past due on his residential property in the amount of about \$41,530, on its second mortgage, to Creditor C. (GX 5 at pages 3.) This mortgage has been paid, as evidenced by a document from the lender. (TR at page 37 lines 9~20, at page 39 lines 19~22, at page 42 line 8 to page 43 line 19, at page 44 line 4 to page 45 line 2, and AppX N.)

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. As the result of his divorce, the Applicant had significant past due debts, related to two properties.

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., . . . divorce or separation), and the individual acted responsibly under the circumstances."* Here, the Applicant's debts are directly related to his divorce, and he has addressed all of the 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."* Pursuant to the short sales, the Applicant has paid all of his past due 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 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

