



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



In the matter of:)	
)	
)	ISCR Case No. 10-08465
)	
)	
Applicant for Security Clearance)	

Appearances

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

October 19, 2011

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 26, 2010. On February 10, 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 March 2, 2011. He answered the SOR in writing (Response) on March 8, 2011, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on April 21, 2011. DOHA issued a notice of hearing on April 26, 2011, and I convened the hearing as scheduled on May 23, 2011. The Government offered Exhibits (GXs) 1 through 5, which were received without objection.

The Applicant testified on his own behalf, as did his wife, and five other friends and/or co-workers. DOHA received the transcript of the hearing (TR) on June 7, 2011. I granted the Applicant's request to keep the record open until June 23, 2011, to submit additional matters. On June 16, 2011, he submitted Exhibits (AppXs) A through C, which were received without objection. The record closed on June 23, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding Subparagraph 1.f., alleging that the Applicant was indebted to Creditor F in the amount of about \$10,000, on a \$200,000 mortgage. (TR at page 49 lines 11~25.) The Applicant had no objection to the motion; and as such, the SOR was so amended.

Findings of Fact

In his Answer to the SOR, the Applicant admitted the factual allegations in Subparagraphs 1.a through 1.e. of the SOR. At his hearing, he admitted Subparagraph 1.f. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

The Applicant "was in the real estate business," when the bottom fell out in 2008. (TR at page 24 line 2 to page 25 line 5.) As a result, his income fell from about "\$7,000 to \$8,000 a month to well under \$2,500 a month." (*Id.*) On or before February 8, 2011, the Applicant filed for the protection of a Chapter 7 Bankruptcy. (Response at page 2.) As a result, on May 11, 2011, he was discharged of his unsecured debtors. (AppX A at page 1.) He now has a positive monthly cash flow of about \$1,988. (AppX C.) His past due debts are as follows:

1.a. It is alleged that the Applicant is indebted to Creditor A in the amount of about \$4,442. (GX 4 at page 2.) This credit card debt was discharged by the Applicant's Chapter 7 Bankruptcy. (TR at page 37 lines 5~22, at page 38 lines 6~11, and AppX A Schedule F at page 2.) This is evidenced by his Schedule F, which includes this debt. (AppX A Schedule F at page 2.)

1.b. It is alleged that the Applicant is indebted to Creditor B in the amount of about \$5,051. (GX 4 at page 2.) This debt was also discharged by the Applicant's Chapter 7 Bankruptcy. (TR at page 37 line 23 to page 38 line 5, at page 38 lines 12~15, and AppX A Schedule F at page 3.) This is evidenced by his Schedule F, which includes this debt. (AppX A Schedule F at page 3.)

1.c. It is alleged that the Applicant is indebted to Creditor C in the amount of about \$103,391. (GX 4 at page 3.) This purchase money debt was discharged by the Applicant's Chapter 7 Bankruptcy. (TR at page 38 line 20 to page 44 line 24, and AppX A Schedule F at page 3.) This is evidenced by his Schedule F, which includes this debt. (AppX A Schedule F at page 3.)

1.d. It is alleged that the Applicant is indebted to Creditor D in the amount of about \$10,169. (GX 4 at page 2.) This credit card debt was discharged by the Applicant's Chapter 7 Bankruptcy. (TR at page 52 line 15 to page 53 lines 10, and AppX A Schedule F at page 2.) This is evidenced by his Schedule F, which includes this debt. (AppX A Schedule F at page 2.)

1.e. It is alleged that the Applicant is indebted to Creditor E in the amount of about \$4,653. (GX 2 at page 14.) This credit card debt was discharged by the Applicant's Chapter 7 Bankruptcy. (TR at page 53 line 11 to page 54 lines 3, and AppX A Schedule F at page 3.) This is evidenced by his Schedule F, which includes this debt. (AppX A Schedule F at page 3.)

1.f. It is alleged that the Applicant is indebted to Creditor F in the amount of about \$10,000. (GX 2 at page 8.) This debt was discharged by the Applicant's Chapter 7 Bankruptcy. (TR at page 29 line 12 to page 31 lines 14, at page 44 line 25 to page 47 line 3, at page 51 line 9 to page 52 line 13, and AppX A Schedule F at page 1.) This is evidenced by his Schedule F, which includes this debt. (AppX A Schedule F at page 1.)

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 had significant past due debts, which were discharged by way of a Chapter 7 Bankruptcy.

However, the countervailing second and fourth Mitigation Conditions are 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., . . . a business downturn . . .), and the individual acted responsibly under the circumstances.”* Here, the Applicant was directly affected by the collapse of the real estate market, as he was in the real estate business. Since then, he has sought and been accorded the protection of a Chapter 7 Bankruptcy. Subparagraph 20(d) is applicable where *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* He has resolved his debts through the Bankruptcy process.

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. Here, he has the unqualified support of those who know the Applicant, as a husband, as a co-worker, and as a friend. (TR at page 71 line 1 to page 109 line 16, and AppX B.) 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.~1.f. For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge