



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



In the matter of:)	
)	
)	ISCR Case No. 10-08719
)	
)	
Applicant for Security Clearance)	

Appearances

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

January 25, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 5, 2010. On June 15, 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 27, 2011. He answered the SOR in writing (Response) on July 15, 2011, and requested a hearing before an Administrative Judge. DOHA received the request on July 20, 2011, and I received the case assignment on September 1, 2011. DOHA issued a notice of hearing the next day, on September 2, 2011, and I convened the hearing as scheduled on September 15, 2011. The Government offered Exhibits (GXs) 1 through 7, which were

received without objection. The Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on September 28, 2011. I granted the Applicant's two requests, one made at his hearing and the other subsequent to his hearing, to keep the record open until January 16, 2012, to submit additional matters. On January 10, 2012, he submitted Exhibit (AppX) A, which was received without objection. The record closed on January 16, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, the Applicant admitted the factual allegations in Subparagraph 1.e. of the SOR. He denied the factual allegations in Subparagraphs 1.a through 1.d. of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

The Applicant's wife "is a real estate agent"; and with the collapse of the real estate market in 2008, her "salary went from . . . about \$105,000 a year - - until the last couple of years - - she's averaged about \$10,000." (TR at page 25 line 5 to page 28 line 3.) All of the alleged past due debts are for student loans that the Applicant and his wife co-signed for one of their daughters. (TR at page 35 line 19 to page 38 line 7.) Their daughter failed to make payments on her student loans; and as a result, the burden of paying them fell on the Applicant and his spouse. (*Id.*)

1.a.-1.d. The first four student loans were owed to Creditor A in the amount of about \$41,534. (GX 7.) These debts have been "settled in full," as evidenced by a letter from Creditor A's legal counsel. (TR at page 45 line 18 to page 47 line 8, and Response at page 4.)

1.e. The last student loan was owed to Creditor E in the amount of about \$17,802. (GX 7.) This debt "has been satisfied by payment/settlement in full," as evidenced by letters from Creditor E's collection company. (TR at page 45 line 18 to page 47 line 8, and AppX A.)

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.

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., . . . a business downturn . . .), and the individual acted responsibly under the circumstances.”* Here, the Applicant’s debts are related to his wife’s significant reduction of income, and to his daughter’s failure to pay her student loans. He now 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.”* The Applicant has settled and paid all of the 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 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 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.e. For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge