



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



In the matter of:)	
)	
)	ISCR Case No. 10-09433
)	
)	
Applicant for Security Clearance)	

Appearances

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

March 26, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 26, 2010. On June 1, 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 10, 2011. He answered the SOR in writing on June 24, 2011, and requested a hearing before an Administrative Judge. DOHA received the request on June 27, 2011, and I received the case assignment on August 10, 2011. DOHA issued a notice of hearing on August 19, 2011, and I convened the hearing as scheduled on September 14, 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. DOHA received the transcript of the hearing (TR) on September 23, 2011. I granted the Applicant's requests, one made at his hearing, and four made subsequent to his hearing, to keep the record open for more than five months, until February 29, 2012, to submit additional matters. On February 28, 2011, he submitted Exhibit (AppX) A, which was received without objection. The record closed on February 29, 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.c., 1.e., 1.f., 1.j., and 1.k. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.a., 1.b., 1.d., 1.g.~1.i., 1.l., and 1.m. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

The Applicant, the victim of an uncaring mother and an abusive father, ran away from home at the age of 12. (TR at page 23 line 1 to page 25 line 12.) He was placed in the foster care system, but did not fare much better there as his alcoholic foster mother would sexually abuse the Applicant and his siblings. (TR at page 25 line 12 to page 26 line 8.) In 2002, at the age of 18, he left this abusive environment, and has supported himself as best he could since then. (TR at page 26 line 8 to page 27 line 16, and GX 1 at page 6.) In 2004, he had an appendectomy, which caused him to be laid up for five days. (TR at page 30 line 5 to page 31 line 4.) As a result, he lost his job, and his sole support was his wife and her income. (*Id.*) In 2009, he suffered an on-the-job injury, which resulted in a drawn out fight to get medical disability. (TR at page 32 line 24 to page 34 line 9.) The loss of employment in 2004, and the job related injury in 2009, have caused the Applicant's current financial difficulties.

1.a. It is alleged that the Applicant is indebted to Creditor A on a medical account, in the amount of about \$731. (GX 5 at page 1.) It appears that this debt was covered by the Applicant's medical insurance, as evidenced by a letter from the Creditor's "Debt Collection Agency." (TR at page 47 line 5 to page 48 line 23, and AppX A at page 4.)

1.b. It is alleged that the Applicant is indebted to Creditor B, as the result of an apartment his family vacated, in the amount of about \$1,335. (GX 5 at page 1.) The Applicant disputes this debt; but despite having more than five months to submit documentation in support of his dispute and/or character evidence as to his truth and veracity, he has submitted nothing in this regard. (TR at page 49 line 1 to page 52 line 3.) I find that this disputed debt is still outstanding.

1.c. It is alleged that the Applicant is indebted to Creditor C for "a water bill," in the amount of about \$305. (GX 5 at page 1.) The Applicant, through his wife who handles their monies and testified on his behalf, intends to make monthly payments of

\$50 towards this debt, but has offered nothing further in this regard. (TR at page 52 line 18 to page 53 line 21.) I find that this debt is still outstanding.

1.d. It is alleged that the Applicant is indebted to Creditor D on another medical account, in the amount of about \$7,349. (GX 5 at page 1.) It appears that this debt was covered by the Applicant's medical insurance, as evidenced by a letter from the Creditor's "Debt Collection Agency." (TR at page 53 line 22 to page 56 line 8, and AppX A at page 3.)

1.e. It is alleged that the Applicant is indebted to Creditor E for jewelry, in the amount of about \$467. (GX 5 at page 1.) The Applicant intends to make monthly payments of \$55 towards this debt, but has offered nothing further in this regard. (TR at page 56 line 9 to page 58 line 7.) I find that this debt is still outstanding.

1.f. It is alleged that the Applicant is indebted to Creditor F for cell phone service, in the amount of about \$293. (GX 5 at page 2.) This debt "has been settled in full," as evidenced by a letter from the successor creditor of this debt. (TR at page 58 line 8 to page 59 line 13, and AppX A at page 5.)

1.g. It is alleged that the Applicant is indebted to Creditor G for a cable bill, in the amount of about \$123. (GX 2 at page 3.) This debt "has been settled in full," as evidenced by a letter from the successor creditor of this debt. (TR at page 59 line 14 to page 60 line 11, and AppX A at page 6.)

1.h. It is alleged that the Applicant is indebted to Creditor H for a storage facility, in the amount of about \$21. (GX 2 at page 3.) The Applicant, through his wife, avers that he has paid this debt, but has offered nothing further in this regard. (TR at page 60 line 12 to page 61 line 5.) I find that this debt is still outstanding.

1.i. It is alleged that the Applicant is indebted to Creditor I for another medical bill, in the amount of about \$1,040. (GX 2 at page 4.) The Applicant disputes this debt, but has submitted nothing in this regard. (TR at page 61 line 6 to page 63 line 18.) I find that this disputed debt is still outstanding.

1. j. It is alleged that the Applicant is indebted to Creditor J for another cable bill, in the amount of about \$378. (GX 2 at page 4.) The Applicant intends to make monthly payments of \$126 towards this debt, but has offered nothing further in this regard. (TR at page 63 line 19 to page 65 line 1.) I find that this debt is still outstanding.

1.k. It is alleged that the Applicant is indebted to Creditor K for a dental bill, in the amount of about \$52. (GX 2 at page 4.) The Applicant, through his wife, avers that he will pay this debt, but has offered nothing further in this regard. (TR at page 65 line 3 to page 66 line 2.) I find that this debt is still outstanding.

1.l. It is alleged that the Applicant is indebted to Creditor L for "a check cashing service," in the amount of about \$253. (GX 2 at page 5.) The Applicant, through his

wife, avers that he has paid this debt, but has offered nothing further in this regard. (TR at page 66 line 9 to page 67 line 11.) I find that this debt is still outstanding

1.m. It is alleged that the Applicant is indebted to Creditor M for another cell phone bill, in the amount of about \$209. (GX 2 at page 5.) The Applicant, through his wife, avers that he has paid this debt, but has offered nothing further in this regard. (TR at page 67 line 12 to page 68 line 10.) I find that this debt is still outstanding

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 Mitigating 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, although it is clear that the Applicant’s financial difficulties are directly related to his 2004 and 2009 medical emergencies that resulted in unemployment, he has only submitted evidence to show that he has addressed four of the thirteen alleged 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 questions and doubts as to Applicant's eligibility and suitability for a security clearance. Despite my leaving the record open for more than five months, he has offered no evidence in support of his averments, and nothing in support of his credibility. For these reasons, 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
Subparagraph 1.a.	For Applicant
Subparagraphs 1.b. and 1.c.	Against Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	Against Applicant
Subparagraphs 1.f. and 1.g.	For Applicant
Subparagraphs 1.h.~1.m.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge