



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



In the matter of:)	
)	
)	ISCR Case No. 10-10529
)	
)	
Applicant for Security Clearance)	

Appearances

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

March 30, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 19, 2010. On November 3, 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 November 10, 2011. He answered the SOR in writing on November 16, 2011, and requested a hearing before an Administrative Judge. DOHA received the request on January 24, 2012, and I received the case assignment that same date. DOHA issued a notice of hearing on January 26, 2012, and I convened the hearing as scheduled on February 22, 2012. The Government offered Exhibits (GXs) 1 through 9, which were received without objection.

The Applicant testified on his own behalf and submitted Exhibits (AppXs) A through C, which were received without objection. DOHA received the transcript of the hearing (TR) on March 5, 2012. I granted the Applicant's request to keep the record open until March 22, 2012, to submit additional matters. On March 22, 2012, he submitted Exhibits D and E, which were received without objection. The record closed on March 22, 2012. 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 all the factual allegations in the Subparagraphs of the SOR, with explanations. The Applicant's current alleged financial difficulties stemmed from a loss of employment in 2006. (TR at page 30 line 21 to page 31 line 11, at page 37 line 1 to page 38 line 2, and GX 2 at page 21.) He has now addressed all of his admitted past due debts, and has a positive monthly cash flow of about \$1,700. (TR at page 36 lines 16~25, at page 38 line 3 to page 41 line 16, and AppX C.)

1.a. In June of 2005, the Applicant filed for the protection of a Chapter 7 Bankruptcy. (GX 1.) His debts were discharged in October of 2005. (*Id.*) His bankruptcy filing stemmed from a period of unemployment, and from providing for the medical needs of his father who eventually succumbed to cancer. (TR at page 26 line 21 to page 28 line 6, and at page 42 line 16 to page 44 line 4.)

1.b. It is alleged that the Applicant is indebted to Creditor B in the amount of about \$9,663. (GX 9 at page 2.) This debt has been satisfied, as evidenced by correspondence from the Creditor's legal representative. (TR at page 28 lines 7~10, and AppX A.)

1.c. It is alleged that the Applicant is indebted to Creditor C in the amount of about \$4,269. (GX 9 at page 2.) The Applicant is making monthly payments of \$200 towards this motorcycle loan, to the satisfaction of the Creditor, as evidenced by correspondence from the Creditor's "Collection and Account Management" representative. (TR at page 28 lines 11~15, and AppX B.)

1.d. It is alleged that the Applicant is indebted to Creditor D in the amount of about \$1,251. The Applicant avers credibly that this car loan has been paid by the Applicant's ex-fiance'e. (TR at page 28 line 6 to page 29 line 11.) His credibility is averred to by those who know the Applicant in the workplace and in the community, and is corroborated by the fact that this alleged debt does not appear on the Applicant's most recent credit report (CR). (Appx E, and GX 9.)

1.e. It is alleged that the Applicant is indebted to Creditor E in the amount of about \$8,770. (GX 9 at page 3.) The Applicant is ready, willing and able to address this car loan; but despite the Applicant's best efforts, he has been unable to contact this

alleged Creditor. (TR at page 29 line 13 to page 30 line 15.) This is evidenced by documents showing his attempts to contact said Creditor. (AppX D.)

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, and that are applicable in this case. 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., loss of employment, . . . unexpected medical emergency), and the individual acted responsibly under the circumstances.”* Here, the Applicant’s debts are related to his loss of employment in 2004 and 2006, and his father’s cancer in 2004. He has 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 and his ex-fiance’e have either paid or are paying three of the four alleged past due debts, and he has been making a concerted effort to address the remaining debt.

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. Those who know the Applicant in the workplace and in the community speak most highly of him. 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