



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



In the matter of:)	
)	
)	ISCR Case No. 11-01074
)	
)	
Applicant for Security Clearance)	

Appearances

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

August 20, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on April 2, 2010. On January 11, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for 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.

Applicant acknowledged receipt of the SOR on January 23, 2013. He answered the SOR in writing on February 8, 2013, and requested a hearing before an Administrative Judge. DOHA received the request on February 21, 2013, and I received the case assignment on March 25, 2013. DOHA issued a notice of hearing on April 2, 2013, and I convened the hearing as scheduled on May 7, 2013. The Government offered Exhibits (GXs) 1 through 10, which were received without objection. Applicant testified on his own behalf and submitted Exhibit (AppX) A, which

was received without objection. DOHA received the transcript of the hearing (TR) on May 15, 2013. I granted Applicant's request to keep the record open until June 7, 2013, to submit additional matters. On May 22, 2013, he submitted Exhibit B, which was received without objection. The record closed on June 7, 2013. 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, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, except for Subparagraph 1.f., without explanations.

Guideline F - Financial Considerations

Applicant is 53 years of age, and has held a security clearance for "approximately 28 years." (TR at page 41 line 21 to page 44 line 17.) He refinanced his house three times. (TR at page 66 line 16 to page 71 line 12.) The monies Applicant received from the refinancing he put into home improvements, such as a \$41,000 swimming pool, and did not use said monies to pay his debts. (*Id.*) With the crash of the housing market in 2008, he could no longer refinance his house and fell behind in his payments. (TR at page 47 line 13 to page 48 line 22, and at page 66 line 16 to page 71 line 12.)

1.a. This admitted past-due debt is a medical bill to Creditor A in the amount of about \$74. (TR at page 54 line 25 to page 56 line 3.) Applicant has yet to address this debt; and as such, it is found against Applicant.

1.b. This admitted past-due debt is another medical bill to Creditor B in the amount of about \$300. (TR at page 56 line 4 to page 57 line 6.) Applicant has yet to address this debt; and as such, it is found against Applicant.

1.c. This admitted past-due debt is to Creditor C in the amount of about \$1,759. (TR at page 57 line 7 to page 58 line 8.) Applicant has yet to address this debt; and as such, it is found against Applicant.

1.d. This admitted past-due debt is to Creditor D in the amount of about \$9,616. (TR at page 58 line 19 to page 61 line 8.) Applicant has yet to address this debt; and as such, it is found against Applicant.

1.e. This admitted past-due debt is to Creditor E in the amount of about \$8,818. (TR at page 61 lines 9~21.) Applicant has yet to address this debt; and as such, it is found against Applicant.

1.f. This alleged debt of about \$296,000 is the result of a foreclosure which Applicant avers was forgiven by Creditor F as he received "a 1099," which he used in filing his 2010 income tax return. (TR at page 66 line 16 to page 75 line 13.)

Applicant's testimony is supported by the Government's most recent credit report, which shows this real estate mortgage debt that was charged off was "PAID." (GX 10 at page 2.) This debt is found for Applicant.

1.g. This admitted past-due debt is to Creditor G in the amount of about \$1,100. (TR at page 61 line 23 to page 62 line 6.) Applicant has yet to address this debt; and as such, it is found against Applicant.

1.h. This admitted past-due debt is a cable bill to Creditor H in the amount of about \$69. (TR at page 62 lines 7~18.) Applicant has yet to address this debt; and as such, it is found against Applicant.

1.i. This admitted past-due debt is to Creditor I in the amount of about \$4,708. (TR at page 62 line 19 to page 64 line 5.) Applicant has yet to address this debt; and as such, it is found against Applicant.

1.j. This admitted past-due debt is a credit card bill to Creditor J in the amount of about \$11,735. (TR at page 64 line 6 to page 65 line 14.) Applicant has yet to address this debt; and as such, it is found against Applicant.

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 Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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. Applicant has significant past-due debts, which he has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant’s past-due indebtedness can be attributed, in part, to the crash of the housing market in 2008, he has done little to address his significant past-due debts, two of which are less than \$100.

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. Although Applicant's past and present "bosses" are laudatory in their comments vis-a-vis Applicant (TR at page 26 line 10 to page 39 line 1, see *also* AppXs A and B), the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. Applicant has over \$38,000 in past due indebtedness that he has yet to address. If he resolves his debts, he may be eligible for access to classified information in the future. 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.~1.e.	Against Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.~1.j.	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