



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



In the matter of:)
)
) ISCR Case No. 11-01689
)
)
Applicant for Security Clearance)

Appearances

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

May 14, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 28, 2010. On July 14, 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 July 29, 2011. He answered the SOR in writing on July 30, 2011, and requested a hearing before an Administrative Judge. DOHA received the request on August 17, 2011, and I received the case assignment on February 13, 2012. DOHA issued a notice of hearing the next day, on February 14, 2012, and I convened the hearing as scheduled on March 20, 2012. The Government offered Exhibits (GXs) 1 through 8, which were received without objection.

The Applicant testified on his own behalf and submitted Exhibit (AppX) A1, which was received without objection. DOHA received the transcript of the hearing (TR) on March 28, 2012. I granted the Applicant's request to keep the record open until April 20, 2012, to submit additional matters. On April 19, 2012, he submitted Exhibits A2 through D, which were received without objection. The record closed on April 23, 2012, when the Exhibits were received from Department Counsel. 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 ¶ 1.g, alleging: "You petitioned Chapter 7 bankruptcy in August 2001, in the United States Bankruptcy Court. Your debts were discharged in November 2001"; and by adding ¶ 1.h, alleging: "Your wages were garnished in the amount of approximately \$400.00 per month, by . . . [a county's] Child Support Services, and have an arrearage balance of approximately \$45,000.00. As of the date of this Statement of Reasons, it remains unpaid." (TR at page 18 line 13 to page 19 line 25). There was no objection to the proposed amendment, and the Appellant admitted both allegations. (*Id.*)

Findings of Fact

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

Guideline F - Financial Considerations

1.a.~1.h. In early 2000, the Applicant was injured on the job; and as a result, had "no income except for Workers Comp income." (TR at page 24 line 20 to page 26 line 6.) During the same period his wife "lost her work and ended up on disability. With the(*sic*) going from a combined \$86,000 a year to just over \$20,000 a year" in family income, they were forced to file for the protection of a Chapter 7 Bankruptcy. (*Id.*, and AppX A2 at pages 8~50.) Their debts were discharged in November of 2001. (*Id.*)

The Applicant's wages are being garnished at a rate of \$400 a month to pay back child support. (TR at page 29 line 1 to page 30 line 14, and AppX D at pages 111~116.) He disputes paternity and contests the results of the blood test, but at present does not have enough money to get a DNA test. (*Id.*)

It is alleged that the Applicant has failed to file both his Federal and State Income Tax Returns for tax years 2008, 2009, and 2010. He has retained Counsel and filed these taxes, as evidenced by his tax returns for those years and a statement from the Applicants Counsel. (TR at page 34 line 23 to page 36 line 3, at page 37 line 24 to

page 38 line3, at page 41 line 12 to page 42 line 19, and AppXs B~D.) Pursuant to a payment plan, he is making monthly payments of \$450 to the Internal Revenue Service (IRS), to the satisfaction of the IRS. (AppX D at pages 54~110.) As to the State tax arrearage, his wages are being garnished at a rate of \$50 a pay period, to the satisfaction of the State's taxing authority. (*Id.*) The Applicant is paid every two weeks. (AppX D at pages 59~110.)

After paying his regular monthly expenses, the Applicant has a positive monthly cash flow of about \$234.68. (AppX A2 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, 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 Bankruptcy is directly related to his and his spouse’s loss of employment and their physical disability. Since then, he has addressed his disputed child support, and has filed both his Federal and State Income Tax Returns. Subparagraph 20(d) is applicable where, “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” The Applicant is making monthly payments of \$400 in child support, the paternity of which he still disputes. He is also making monthly payments of \$450 to the IRS, and payments of \$50 every two weeks to the State taxing authority.

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 speak most highly of him. (AppX A1.) 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.h. 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