



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



In the matter of:)	
)	
)	ISCR Case No. 11-02007
)	
)	
Applicant for Security Clearance)	

Appearances

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

November 20, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on July 21, 2010. On April 16, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and D 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.

The Applicant answered the SOR in writing on May 12, 2012, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on August 3, 2012. The Applicant responded to the FORM on August 17, 2012, noting that he “will need additional time,” but he submitted nothing further. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated May 12, 2012, the Applicant admitted the factual allegations in Paragraphs 1.a. through 1.d of the SOR, with explanations. He denied the factual allegations in Paragraph 2.a. of the SOR.

Guideline F - Financial Considerations

1.a. The Applicant filed for the protection of a Chapter 7 Bankruptcy in January of 1988. (Government Exhibit (GX) 4.) His debts were discharged in May of 1988. (*Id.*)

1.b. The Applicant again filed for the protection of a Chapter 7 Bankruptcy in December of 1996. (GX 6.) This bankruptcy was terminated in March of 1997. (*Id.*)

1.c. The Applicant filed a third time for the protection of a Chapter 7 Bankruptcy in March of 2002. (GX 8.) His debts were discharged in July of 2003. (*Id.*)

1.d. The Applicant is indebted to a credit corporation in the amount of about \$45,000 as the result of a vehicle that was repossessed. (GX 11 at page 53, and GX 16 at page 3.) I find that this debt is still outstanding.

Guideline D - Sexual Behavior

2.a. It is alleged that in March of 1998, the Applicant was discharged from the Marine Corps under Other Than Honorable Conditions (OTH) in lieu of being court-martialed for sexually abusing his daughter. (GX 7, and GX 11 at pages 27~28.) The Applicant does not deny that he was so discharged, but vehemently denies the underlying basis for the discharge. (GX 3.) He avers, in part, the following:

I requested the OTH Discharge to avoid putting my children and new (at the time) wife & daughter through months of litigation due to my ex-wife's hatred of me causing her to make inflammatory accusations in order to get custody of the children (it worked, by the way).

Any investigation should have included speaking to/corresponding with the parties involved. Please speak with the daughter in question . . . who is currently twenty-seven years old, married with two children (*Id.*)

There is no evidence presented as to the alleged sexual abuse, only the fact that there was an OTH Discharge.

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 a significant past due debt.

I can find no countervailing Mitigating Condition that is applicable here. Despite two bankruptcy discharges, the Applicant still has past due indebtedness of about \$45,000.

Guideline D - Sexual Behavior

Paragraph 12 sets out the security concern relating to Sexual Behavior:

Behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgement or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.

I find no Disqualifying Condition that is applicable here. The Applicant vehemently denies the allegation; and there is little evidence to counter his denial, other than his OTH Discharge, the underlying circumstances of which he has explained.

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. The Applicant still has a \$45,000 past due debt, despite having the benefit of two previous Chapter 7 Bankruptcies. For this reason, 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
Subparagraphs 1.a.~1.d.	Against Applicant
Paragraph 2, Guideline D:	FOR APPLICANT
Subparagraph 2.a.	For 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