



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



In the matter of:)	
)	
)	ISCR Case No. 11-05256
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Barry M. Sax, Esquire

August 7, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 10, 2006. On January 20, 2012, 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 January 30, 2012. He answered the SOR in writing through counsel on February 10, 2012, and requested a hearing before an Administrative Judge. DOHA received the request on February 13, 2012, and I received the case assignment on March 21, 2012. As the Applicant's Counsel was out of the country until May 14, 2012, I granted the Applicant's request for a delay in setting the case until May 15, 2012, in order for his Counsel to be available.

DOHA issued a notice of hearing on May 15, 2012, and I convened the hearing as scheduled on June 4, 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 K, which were received without objection. DOHA received the transcript of the hearing (TR) on June 12, 2012. The record closed on June 4, 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 of the factual allegations of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Financial Considerations

The 43-year-old Applicant has held a security clearance for “24 years,” and has “never had a violation” of that trust. (TR at page 27 line 8 to page 28 line 6, and AppXs G and H.) His financial difficulties began in 2010, when his pregnant wife, who suffers from diabetes, was hospitalized “approximately one month before the birth of . . . [their] child.” (TR at page 29 line 7 to page 33 line 9, and at page 42 line 18 to page 43 line 13.) Furthermore, she quit her job in order to raise their child, which resulted in their annual family income being reduced from about \$105,000 to about \$83,400. (*Id.*) With this significant reduction in income, they started to have difficulties in paying their monthly bills. (TR at page 29 line 7 to page 33 line 9, and at page 42 line 18 to page 43 line 13.) Based on the advice of a bankruptcy attorney, they stopped paying their bills, and filed for the protection of a Chapter 13 Bankruptcy. (TR at page 33 line 10 to page 37 line 13, and at page 54 line 10 to page 55 line 17.) Through this bankruptcy, they make monthly payments of \$2,400 to the Chapter 13 Trustee. (TR at page 52 line 23 to page 55 line 2.) They have made five of sixty monthly payments, pursuant to their five year Chapter 13 Bankruptcy plan.

1.a. The first debt is to Creditor A in the past due amount of about \$13,903. This debt has been included in the Applicant’s bankruptcy filing. (Applicant’s Schedule F at page 3.)

1.b. The second debt is to Creditor B in the past due amount of about \$12,509. This debt has been included in the Applicant’s bankruptcy filing. (Applicant’s Schedule F at page 3.)

1.c. The third debt is to Creditor C in the past due amount of about \$1,282. This debt has been included in the Applicant’s bankruptcy filing. (Applicant’s Schedule F at page 3.)

1.d. The fourth debt is to Creditor D in the past due amount of about \$1,636. This debt has been included in the Applicant's bankruptcy filing. (AppX I.)

1.e. The fifth debt is to Creditor E in the past due amount of about \$1,611. This debt has been included in the Applicant's bankruptcy filing. (Applicant's Schedule F at page 2.)

1.f. The sixth debt is to Creditor F in the past due amount of about \$956. This debt has been included in the Applicant's bankruptcy filing. (Applicant's Schedule F at page 2.)

1.g. The seventh debt is to Creditor G in the past due amount of about \$3,674. This debt has been included in the Applicant's bankruptcy filing. (Applicant's Schedule F at page 1.)

1.h. The eighth debt is to Creditor H in the past due amount of about \$2,200. This debt has been included in the Applicant's bankruptcy filing. (Applicant's Schedule F at page 3.)

1.h. The ninth debt is to Creditor I in the past due amount of about \$5,200. This debt has been included in the Applicant's bankruptcy filing. (Applicant's Schedule F at page 1.)

1.j. The ninth debt is to Creditor J in the past due amount of about \$2,950. This debt has been included in the Applicant's bankruptcy filing. (Applicant's Schedule F at page 3.)

1.k. The last debt is to a taxing authority in the past due amount of about \$4,600. This debt has been included in the Applicant's bankruptcy filing. (Applicant's Schedule E.)

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 Mitigating 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 financial situation is directly related to his wife’s difficult pregnancy, and her leaving her job to care for their child. Since then, he has engaged a bankruptcy attorney, and has addressed all of the alleged past due debt through the protection of a Chapter 13 Bankruptcy. 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 \$2,400 to the Bankruptcy Trustee, and will have all of the alleged debts resolved in 55 months.

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 Applicant is well respected in the workplace and in his community. (AppXs A~F.) 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.k. 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