



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 11-08831 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

August 29, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 9, 2011. On October 1, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 answered the SOR in writing on November 30, 2012, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on March 25, 2013. DOHA initially issued a notice of hearing on April 2, 2013, setting the hearing for April 25, 2013. Applicant's averred that his mother was scheduled for surgery on April 25th; and as such, the hearing was rescheduled for and convened on May 13, 2013. The Government offered Exhibits

(GXs) 1 through 11, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) A through Y, which were received without objection. DOHA received the transcript of the hearing (TR) on May 21, 2013. I granted Applicant's request to keep the record open until June 21, 2013, to submit additional matters. He submitted Exhibit Z, which was received in a timely fashion; and as there was no objection, the record closed on June 24, 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 denied all the factual allegations of the SOR, except for subparagraphs 1.g. and 1.h., with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

Applicant spent extended periods of time as a civilian working "overseas"; and as a result, did not keep up with his financial responsibilities. (TR at page 83 at line 23 to page 84 line 20.)

1.a. and 1.e. It is alleged that Applicant is indebted to the Internal Revenue Service (IRS) by way of tax liens in a amount totaling about \$1,024,000. (GX 9 at page 6, and 11 at page 1.) In March of 2005, Applicant filed his federal income tax return for tax year 2002; and in March of 2013, Applicant filed his federal income tax returns for tax years 2003~2009. (TR at page 69 lines 4~21, and AppXs F~P.) He owes the IRS about \$200,000 in back taxes and avers he is "currently working on a payment plan." (AppX Z.) I find that this substantial debt is still outstanding.

1.b.~1.d., 1.f. and 1.i. It is alleged that Applicant is indebted to a state taxing authority by way of tax liens in a amount totaling about \$286,000. (GX 9 at page 6, and 11 at page 1.) In July of 2012, Applicant filed his state income tax return for tax year 2002; and in March of 2013, he filed his state income tax returns for tax years 2003~2009. (TR at page 69 line 24 to page 70 line 15, at page 76 line 13 to page 77 line 17, and AppXs Q~X.) According to state tax documents, he owes the state about \$1,503 in back taxes (AppX Y), but he avers "I will have a 12k [\$12,000] plus refund" (AppX Z at page 1). Pursuant to the state tax documents, I find that this debt is still outstanding.

1.g. and 1.h. These are the same past-due debts for back child support in the amount of about \$27,238. (AppX B at page 2.) Pursuant to a state superior court order, Applicant is to pay a lump sum of "\$15,000 toward the outstanding arrearages," and then a "minimum monthly payment of \$1,100" thereafter, until the past-due debt is paid. (AppX B at page 2.) Applicant avers he is "making arrangements to pay a lump sum of 5k [\$5,000] and a monthly amount of 1100.00 with 2k [\$2,000] at the end of December [2013] to make up the arrears." (AppX Z at page 2.) Even using Applicant's

calculations, he is \$8,000 short of the court ordered payment. I find that this debt is still outstanding.

1.i. It is alleged that Applicant has a past-due debt in favor of Creditor I in the amount of about \$114. Applicant denies this debt as being past-due, and it does not appear on the Government's most recent credit report. (TR at page 79 lines 12~25, see *also* GX 11.) I find in favor of Applicant as to this debt.

1.j. It is alleged that Applicant has a past-due debt in favor of Creditor J in the amount of about \$2,188. Applicant denies this debt as being past-due, and it also does not appear on the Government's most recent credit report. (TR at page 80 line to page 81 line 5, see *also* GX 11.) I find in favor of Applicant as to this debt.

Guideline E - Personal Conduct

2.a. On his February 2011 e-QIP, Applicant answered "No" to "Section 26; Financial Record," averring that he filed and paid his state and federal taxes in a timely fashion, that he had no tax liens, and that he had no past-due debts in excess of 90 or 180 days. (GX 4 at page 30.) He testified that he provided information, as to what information he is not clear, that the e-QIP was filled out for him, that he "didn't even look at it that close" and just signed it. (TR at page 81 line 6 to page 82 line 1, and at page 90 line 11 to 91 line 12.) I find this to be a wilful falsification.

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 a significant past due debts that he has yet to address: at least \$200,000 to the IRS, about \$1,500 to his state, and a court-ordered back child support that he is \$8,000 short of addressing. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Subparagraph 20(d) applies where the evidence shows “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Applicant has failed to submit any documentation, only his bare averments, showing that he has made a good-faith effort to address his significant debts. Financial Considerations are found against the Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 15: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”

The following Disqualifying Condition under Subparagraph 16(a) applies. It provides that the “*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . .*” may be disqualifying. I can find no countervailing Mitigating Condition here, as the Applicant could have easily answered his e-QIP honestly, if he had just read the document that he certified as “true, complete, and correct.”

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 AG 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 him at work speak most highly of Applicant. (AppXs C and D). However, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance.

For these reasons, I conclude Applicant has not mitigated the security concerns arising from his Financial Considerations and related Personal Conduct.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a.~1.i. | Against Applicant |
| Subparagraphs 1.j. and 1.k. | For Applicant |
| Paragraph 1, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a.: | Against Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge