



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



In the matter of:)	
)	
)	ISCR Case No. 11-08981
)	
)	
Applicant for Security Clearance)	

Appearances

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

January 31, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 14, 2010. On August 31, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 September 10, 2012. He answered the SOR in writing on September 25, 2012, and requested a hearing before an Administrative Judge. DOHA received the request on September 27, 2012, and I received the case assignment on November 2, 2012. DOHA issued a notice of hearing on November 13, 2012, and I convened the hearing as scheduled on November 28, 2012. The Government offered Exhibits (GXs) 1 through 8, which were received

without objection. The Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on December 6, 2012. I granted the Applicant's request to keep the record open until December 28, 2012, to submit additional matters. On December 19, 2012, he submitted Exhibit (AppX) A through Department Counsel, which were received without objection. The record closed on January 2, 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, the Applicant admitted the factual allegations in Subparagraph 1.a. of the SOR, with explanation. He denied the factual allegations in Subparagraphs 2.a. and 2.b. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

The Applicant's wife, whose income exceeded that of the Applicant, was laid off her job in July of 2006. (TR at page 29 lines 7~19, at page 32 line 8 to page 41 line 13, and AppX A at pages 2~3.) This has caused the Applicant's current financial difficulties.

1.a. It is alleged that the Applicant is indebted to a mortgage company in the amount of about \$140,000. (GX 8 at page 2.) This is the result of a foreclosure that occurred in August of 2011. (TR at page 46 line 25 to page 48 line 9.) The Applicant avers that, despite his best efforts, he has been unable to set up a payment plan to address this admitted past due second mortgage. (TR at page 55 line 15 to page 56 line 15.) He specifically avers that "we've written them letters too, and we've done the registered thing"; and that although he did not bring them to his hearing, he had "some" such documents. (TR at page 55 line 15 to page 56 line 3.) Despite my leaving the record open for one month pursuant to the Applicant's specific request, he has submitted no such documentation in support of his bare averment. (TR at page 7 line 1 to page 8 line 1.) I find that the Applicant has not addressed this significant past due debt.

Guideline E - Personal Conduct

2.a. and 2.b. It is alleged that the Applicant failed to disclose his above mentioned foreclosure debt in answer to Sections 26g. and 26n. on his June 2010 e-QIP. (GX 1 at pages 43 and 44.) At the time the Applicant executed his e-QIP, he thought he was current with this second mortgage. (TR at page 48 line 10 to page 51 line 21, and at page 54 line 22 to page 55 line 14.) This is believable, as the foreclosure did not occur until more than a year later. Furthermore, his testimony in this regard is attested to by those who know the Applicant. (AppX A at pages 4~8.) I find no wilful falsification here.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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 common sense 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. AG 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 debt that he has yet to address. 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(b) applies where *"the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment . . .) and the individual acted responsibly under the circumstances."* Here, the Applicant's spouse, whose income exceeded that of the Applicant, lost her job, and she has been unable to find new employment. However, the Applicant has yet to address the foreclosed second mortgage. Subparagraph 20(d) applies where the evidence shows *"the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."* Again, the Applicant has failed to submit any documentation showing that he has made a good-faith effort to address this significant debt. 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."

I find no Disqualifying Condition that is applicable here. The Applicant testified credibly that he thought he was current on his second mortgage when he executed his e-QIP more than a year prior to the foreclosure. Personal Conduct is found for the Applicant.

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 and in the community speak most highly of the Applicant. (AppX A). 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.

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.:	Against Applicant
Paragraph 1, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. and 2.b.:	For 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