



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-09195
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

April 3, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 4, 2011. On September 21, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 October 9, 2012, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on December 5, 2012. Applicant failed to respond to the FORM. 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 October 9, 2012, Applicant admitted the factual allegations in all the Paragraphs of the SOR, without explanations.

Guideline F - Financial Considerations

As gleaned from his e-QIP, and noted by Department Counsel in the FORM, Applicant has been gainfully employed since April of 2004. (Item 3 at pages 16~21.) He has offered no explanation as to how he accumulated his admitted past due indebtedness.

1.a. Applicant is indebted to Creditor A as the result of a judgment in the amount of about \$2,057. (Item 6 at page 1, and Item 8.) In his answer to the SOR, Applicant avers that he is "paying them \$50.00 a month that atomacally [sic] comes out of my checking account." He has also submitted a document that shows the creditor has agreed to this arrangement. (Item 4 at page 20.) However, Applicant has failed to show he is making the agreed to payments. I find that this judgement is still outstanding in the amount alleged in the SOR.

1.b. Applicant is indebted to Creditor B in the amount of about \$1,147. (Item 6 at page 1.) In his answer to the SOR, Applicant avers that he will address this debt after he addresses two other debts. I find that this debt is still outstanding.

1.c. Applicant is indebted to Creditor C in the amount of about \$832. (Item 6 at page 1.) In his answer to the SOR, Applicant also avers that he will address this debt after he addresses two other debts. I find that this debt is still outstanding.

1.d. and 1.e. Applicant is indebted to Creditor D on two debts in an amount totaling about \$1,399. (Item 6 at page 1.) In his answer to the SOR, Applicant again avers that he will address this debt after he addresses two other debts. I find that these debts are still outstanding.

1.f. Applicant is indebted to Creditor F in the amount of about \$342. (Item 6 at page 1.) In his answer to the SOR, Applicant again avers that he will address this debt after he addresses two other debts. I find that this debt is still outstanding.

1.g. Applicant is indebted to Creditor G in the amount of about \$343. (Item 6 at page 1.) In his answer to the SOR, Applicant again avers that he will address this debt after he addresses two other debts. I find that this debt is still outstanding.

1.h. Applicant is indebted to Creditor H in the amount of about \$305. (Item 6 at page 2.) In his answer to the SOR, Applicant avers that he has agreed to make monthly payments \$50, which will be automatically deducted from his "checking account . . . till [sic] the full settlement price (\$200) is paid off." He has also submitted a document that shows the creditor has agreed to this arrangement. (Item 4 at page 21.) However, Applicant has failed to show he is making the agreed to payments. I find that this debt is still outstanding.

1.i. Applicant is indebted to Creditor I in the amount of about \$9,304. (Item 6 at page 2.) In his answer to the SOR, Applicant again avers that he will address this debt after he addresses two other debts. I find that this debt is still outstanding.

1.j. Applicant is indebted to Creditor J in the amount of about \$7,998. (Item 6 at page 2.) In his answer to the SOR, Applicant again avers that he will address this debt after he addresses two other debts. I find that this debt is still outstanding.

1.k. Applicant is indebted to Creditor K in the amount of about \$2,000. (Item 6 at page 2.) In his answer to the SOR, Applicant again avers that he will address this debt after he addresses two other debts. I find that this debt is still outstanding.

1.l. Applicant is indebted to Creditor L in the amount of about \$398. (Item 7 at page 8.) In his answer to the SOR, Applicant again avers that he will address this debt after he addresses two other debts. I find that this debt is still outstanding.

1.m. Applicant is indebted to Creditor M in the amount of about \$323. (Item 7 at page 10.) In his answer to the SOR, Applicant again avers that he will address this debt after he addresses two other debts. I find that this debt is still outstanding.

1.n. Applicant is indebted to Creditor N as the result of a judgment in the amount of about \$3,056. (Item 9.) In his answer to the SOR, Applicant again avers that he will address this judgment after he addresses two other debts. I find that this judgment is still outstanding.

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 AG ¶ 2(a) describing 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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance 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 adverse 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 had significant past-due debts that he has failed to demonstrate he has addressed. I can find no countervailing Mitigating Condition that is applicable here. He has been gainfully employed since 2004, but has yet to address his debts.

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 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. 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.n.	Against 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