



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



In the matter of:)
)
) ISCR Case No. 11-10892
)
)
Applicant for Security Clearance)

Appearances

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

August 8, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 10, 2011. On November 27, 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 acknowledged receipt of the SOR on December 11, 2012. He answered the SOR in writing on December 20, 2012, and requested a hearing before an Administrative Judge. DOHA received the request on December 28, 2012, and I received the case assignment on February 19, 2013. DOHA issued a notice of hearing on March 19, 2013, and I convened the hearing as scheduled on April 3, 2013. The Government offered Exhibits (GXs) 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) A and B, which

were received without objection. DOHA received the transcript of the hearing (TR) on April 11, 2013. I granted Applicant's requests, one made at his hearing and the other after his hearing, to keep the record open until June 3, 2013, to submit additional matters. On April 24, 2013, he submitted Exhibits C and D, and on May 3, 2013, he submitted Exhibit E, which were received without objection. The record closed on June 3, 2013. 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, Applicant admitted all the factual allegations of the SOR, with explanations.

Guideline F - Financial Considerations

Applicant was a real estate appraiser. (TR at page 40 line 4 to page 41 line 7, see *also* at page 24 line 8 to page 33 line 14.) In 2007, he had a dispute with a major bank over its lending practices; and as a result, his referrals were cut by 90%. (*Id.*) This loss of income was further exacerbated by the collapse of the real estate market in 2008. (TR at page 40 line 4 to page 41 line 7.) To address his financial difficulties, Applicant hired counsel and filed a Chapter 7 Bankruptcy petition on April 22, 2013. (AppXs D and E.)

1.a. Applicant admits that he is indebted to creditor A on a medical debt in the amount of about \$633. (TR at page 33 line 18 to page 43 line 2.) This debt is included in Applicant's bankruptcy petition. (AppX E at page 12.)

1.b. Applicant admits that he is indebted to creditor B on another medical debt in the amount of about \$125. (TR at page 33 line 18 to page 43 line 2.) This debt is included in Applicant's bankruptcy petition. (AppX E at page 14.)

1.c. Applicant admits that he is indebted to creditor C on a third medical debt in the amount of about \$760. (TR at page 33 line 18 to page 43 line 2.) This debt is included in Applicant's bankruptcy petition. (AppX E at page 13.)

1.d. Applicant admits that he is indebted to creditor D on a credit card debt in the amount of about \$2,400. (TR at page 33 line 18 to page 43 line 2.) This debt is included in Applicant's bankruptcy petition. (AppX E at page 12.)

1.e. and 1.k. These are the same debt. Applicant admits that he is indebted to creditor E on another credit card debt in the amount of about \$11,834. (TR at page 33 line 18 to page 43 line 2.) This debt is included in Applicant's bankruptcy petition. (AppX E at page 12.)

1.f. and 1.g. Applicant admits that he is indebted to creditor F on two accounts totaling about \$1,126. (TR at page 33 line 18 to page 43 line 2.) These debts are included in Applicant's bankruptcy petition. (AppX E at pages 20 and 21.)

1.h. and 1.i. Applicant admits that he is indebted to creditor H on two accounts totaling about \$960. (TR at page 33 line 18 to page 43 line 2.) These debts are included in Applicant's bankruptcy petition. (AppX E at page 18.)

1.j. Applicant admits that he is indebted to creditor J on a cell phone debt in the amount of about \$279. (TR at page 33 line 18 to page 43 line 2.) This debt is included in Applicant's bankruptcy petition. (AppX E at page 21.)

1.k. This debt has already been discussed, above.

1.l.~1.p. Applicant is indebted to the Internal Revenue Service (IRS) in an amount totaling about \$22,000. Pursuant to an agreement with the IRS, he is making monthly payments of \$50 towards this tax debt which will be increased to \$325 in October 2013. (TR at page 34 line 3 to page 35 line 7, and AppX C at pages 3~5.)

1.q. Applicant admits that he is indebted to creditor Q on a store debt in the amount of about \$421. (TR at page 33 line 18 to page 43 line 2.) This debt is included in Applicant's bankruptcy petition. (AppX E at page 17.)

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 had difficulty meeting his financial obligations since 2007. However, I find two countervailing Mitigating Conditions that are applicable here. Under Subparagraph 20 (b), where “*the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. loss of employment, a business downturn, . . .), and the individual acted responsibly under the circumstances,*” may be mitigating. Applicant was forced to file for the protection of

a Chapter 7 Bankruptcy due to his significant loss of income since 2007. Under Subparagraph 20 (d), it may also be mitigating where “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Applicant has addressed all of his debts through his April 2013 bankruptcy filing, and through his payment agreement with the IRS.

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. Those who know Applicant in the community and in the workplace speak most highly of him, as evidenced by the testimony of his former employer, of a coworker, and of a neighbor. (TR at page 43 line 10 to page 59 line 21.) The record evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For this reason, 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
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant

Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	For Applicant
Subparagraph 1.n.	For Applicant
Subparagraph 1.o.	For Applicant
Subparagraph 1.p.	For Applicant
Subparagraph 1.q.	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