



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



In the matter of:)	
)	
)	ISCR Case No. 11-11732
)	
)	
Applicant for Security Clearance)	

Appearances

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

January 25, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 2, 2011. On September 4, 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 14, 2012. He answered the SOR on October 1, 2012, and requested a hearing before an Administrative Judge. DOHA received the request on October 6, 2012, and I received the case assignment on December 3, 2012. DOHA issued a notice of hearing that same day, and I convened the hearing as scheduled on December 18, 2012. The Government offered Exhibits (GXs) 1 through 6, which were received without objection.

The Applicant testified on his own behalf, but submitted no Exhibits. DOHA received the transcript of the hearing (TR) on December 28, 2012. The record closed on December 18, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding ¶ 1.h., alleging the Applicant owed an additional creditor about \$4,811, and that “this debt has not been paid and has been charged off.” (TR at page 7 line 22 to page 11 line 14). The Applicant did not object to the motion; and as such, the SOR was so amended. (*Id.*)

Findings of Fact

In his Answer to the SOR, the Applicant admitted the factual allegations in all of the Subparagraphs of the SOR, with explanations, except for Subparagraph 1.e., a debt he disputes.

Guideline F - Financial Considerations

The Applicant past due indebtedness stems from a long period of unemployment or underemployment, commencing in 2001, when he was “laid off” from a job where he made about “\$95,000 a year.” (TR at page 27 line 20 to page 28 line 11, and at page 45 line 21 to page 46 line 13.) The alleged past due debts are as follows:

1.a. and 1.h. I find that these are one and the same debt to a bank for a credit card debt, with an outstanding judgement of about \$6,512. (GX 6 at page 1.) The last time the Applicant made a payment towards this judgement was “at least four years” ago. (TR at page 28 line 15 to page 29 line 25, and at page 35 line 24 to page 37 line 1.) I find that this judgement is still outstanding.

1.b. and 1.d. These debts are separate tax liens, in favor of the state where the Applicant lives, in the amounts of about \$11,655 and \$8,456, respectively. (GX 6 at page 1.) He admits that he has not addressed these tax liens; and as such, I find them to be still outstanding. (TR at page 30 line 1 to page 31 line 9, and at page 33 line 2 to page 34 line 7.)

1.c. This debt is a tax lien, in favor of the federal government, in the amount of about \$29,848. (GX 6 at page 1.) The Applicant admits that he has not addressed this tax lien other than having his refunds credited towards the lien; and as such, I find it to be still outstanding. (TR at page 31 line 10 to page 33 line 1.)

1.e. The Applicant disputes this debt of about \$332 for an unspecified item “advertised on the radio”; which he ordered, but he claims the creditor delivered more

items than he had ordered. (TR at page 34 line 8 to page 35 line 7.) As this debt appears on the Applicant's most recent credit report (GX 6 at page 1); and he offers nothing further in this regard other than his bare averment, I find this debt to be still outstanding.

1.f. This debt is a credit card debt in the amount of about \$8,598. (GX 6 at page 2.) As the last time the Applicant made a payment towards this debt was "approximately four years" ago, I find this debt to be still outstanding. (TR at page 35 lines 8~23.)

1.g. This debt is to a bank for a mortgage that is past due in the amount of about \$133,000. (GX 6 at page 2.) From the "end of 2008," when the Applicant "got laid off at another job," until the time of his hearing, the Applicant has made only one payment towards this outstanding mortgage. (TR at page 37 line 2 to page 43 line 1.) He is awaiting a short sale of this property, but at present it is still outstanding. (*Id.*)

Guideline E - Personal Conduct

2.a. In September of 2008, the Applicant was arrested for and charged with Possession of a Controlled Substance. (GX 1 at page 28, and GX 2 at page 3.) Although he avers that the controlled substance belonged to the passenger of the car he was driving, he pled guilty to the charge, was fined \$200, placed on probation, ordered to complete drug awareness classes, and to attend Drug Anonymous meeting. (*Id.*, and TR at page 43 lines 2~21.) He was also placed in a deferred judgement program, which he completed in July of 2010. (*Id.*)

2.b. In September of 2009, the Applicant was arrested for and charged with Having an Improper License Plate on a car, and with Providing a False Registration. (GX 2 at page 4.) He pled guilty as charged and was fined. (*Id.*, and TR at page 43 line 22 to page 45 line 11.)

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. 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. The Applicant admittedly has a significant amount of past due debt, which he has yet to address.

I can find no countervailing Mitigating Condition that is applicable here. Although the Applicant can attribute his inability to pay his debt to being unemployed or underemployed since 2001, he has not “acted responsibly under the circumstances,” as required by the second Mitigating Condition. Financial Considerations is found against the Applicant.

Guideline E - Personal Conduct

The security concern relating to Personal Conduct in Paragraph 15, “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations,” could indicate that the person may not properly safeguard information.

The adjudicative guidelines set out certain conditions that could raise security concerns. Paragraph 16(c) arguably applies and provides that *“credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information”* may be disqualifying. Here, the Applicant has two arrests resulting in convictions, the last arrest being in September of 2009. These are countered, however, by mitigating condition 17(c) as *“the offense is so minor, or so much time has passed . . . that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.”* His last arrest occurred more than three years ago. 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 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. The Applicant has yet to address his significant past due debt. 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.h.	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge