



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



In the matter of:)	
)	
)	ISCR Case No. 11-14191
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Jason P. Turner, Esquire

September 9, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on November 18, 2010. On February 27, 2013, 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 through counsel on March 22, 2013, and requested a hearing before an Administrative Judge. DOHA received the request on March 26, 2013, and I received the case assignment on May 13, 2013. DOHA issued a notice of hearing on May 22, 2013, and I convened the hearing as scheduled on June 25, 2013. The Government offered Exhibits (GXs) 1 through 10, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs)

A through H, which were received without objection. DOHA received the transcript of the hearing (TR) on July 3, 2013. I granted Applicant's request to keep the record open until July 24, 2013, to submit additional matters. On July 24, 2013, he submitted Exhibit I, which was received without objection. As the undersigned was on leave until the end of July, the record closed on August 1, 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. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

Applicant is retired from the Navy. (TR at page 44 line 13 to page 45 line 22, and at page 105 lines 2~5.) He was diagnosed with cancer "in late 2006," which resulted in his wife becoming his "sole care giver." (TR at page 50 line 9 to page 59 line 19.) She handled their financial situation poorly during this medical crisis. (*Id.*) She turned to gambling, and attempted to cover her gaming loses by failing to withhold any monies from her paycheck to pay their taxes. (TR at page 50 line 9 to page 59 line 19, and AppX B.) Applicant discovered these deficiencies in 2010; and despite his wife contracting cancer that year and dying of the disease only a month prior to his hearing, he has addressed their past-due indebtedness. (AppX A.)

1.g. Applicant and his spouse filed for the protection of a Chapter 7 bankruptcy in September of 2010. (TR at page 49 lines 8~18, at page 64 line 15 to page 69 line 11, at page 114 line 14 to page 116 line 16, and at page 117 line 7 to page 118 line 2.) Because they could not pass the "means test" as their combined income at the time of the filing was too high, their bankruptcy petition was converted to a Chapter 13 in January of 2011. (*Id.*) However, due to his spouse's cancer, which resulted the loss of her significant income, they could not keep up with their court ordered payments and the Chapter 13 was dismissed in September of 2011. (TR at page 49 lines 8~18, at page 64 line 15 to page 69 line 11, at page 114 line 14 to page 116 line 16, and at page 117 line 7 to page 118 line 2.)

1.f. Applicant and his spouse again filed for the protection of a Chapter 7 bankruptcy in July of 2012. (TR at page 70 line 3 to page 71 line 13, and at page 129 lines 11~21.) Their unsecured debts were discharged in October of 2012. (*Id.*) As of January of 2013, Applicant has a positive monthly cash flow of about \$1,991, and no past-due indebtedness. (TR at page 73 at page 9 to page 74 line 16, and GX 7 at page 11.)

1.a.~1.d. It is alleged that Applicant is indebted to the Internal Revenue Service (IRS) in the amount of about \$19,000. Applicant set up a payment plan by which he was making monthly payments of \$222 towards a \$17,955 deficiency. (TR at page 75

line 3 to page 78 line 16, and AppX E.) This is evidenced by documents from the IRS. (AppX E.) However, Applicant has recently received monies from his deceased spouse's life insurance, and with said monies he has paid his debt to the IRS. (AppX I.) This is evidenced by his banking records. (AppX I at page 4.)

1.f. It is alleged that Applicant is indebted to a state taxing authority for about \$7,384. Applicant set up a payment plan by which he was making monthly payments of \$150 towards this tax deficiency. (TR at page 129 line 22 to page 130 line 5, and AppX H.) This is evidenced by a document from the Applicant's bank. (AppX H at page 2.) Again, Applicant has recently received monies from his deceased spouse's life insurance, and with said monies he has paid his debt to the state taxing authority. (AppX I.) This is evidenced by his banking records. (AppX I at page 5.)

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 2010. 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, . . . unexpected medical emergency, . . .), 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 family’s significant loss of income since 2010. 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 October 2012 bankruptcy discharge, and by paying off the IRS and his state’s taxing authority.

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 workplace speak most highly of him. (AppX F.) 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, under the whole-person concept.

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

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