



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



In the matter of:)	
)	
)	ISCR Case No. 11-14723
)	
)	
Applicant for Security Clearance)	

Appearances

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

July 17, 2014

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 6, 2011. On January 8, 2014, 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 January 14, 2014. He answered the SOR in writing that same date, January 14, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request on February 3, 2014, and I received the case assignment on March 19, 2014. DOHA issued a notice of hearing on March 31, 2014, and I convened the hearing as scheduled on April 15, 2014. The Government offered Exhibits (GXs) 1

through 7, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) A through F, which were received without objection. DOHA received the transcript of the hearing (TR) on April 25, 2014. I granted Applicant's request to keep the record open until June 20, 2014, to submit additional matters. On June 20, 2014, he submitted Exhibits G through L, which were received without objection. The record closed on June 23, 2014. 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, Applicant admitted the factual allegations in Subparagraphs 1.a.~1.d., 1.f.~1.k and 1.m. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.e., 1.l. and 1.n. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

The 58 year old Applicant avers that his current financial situation stemmed from the crash of the real estate market in 2008. (TR at page 5 lines 24 to page 6 line 7, and at page 41 line 15 to page 52 line 25.) It has also been exacerbated by a pending divorce. (TR at page 41 line 15 to page 52 line 25.)

In 2007, his family moved from House #1, which he retained, to a larger House #2, which he built as the general contractor. (TR at page 41 line 15 to page 46 line 3.) However, it soon became apparent that he was unable to maintain two mortgages. Applicant began "to rob Peter to pay Paul," and soon incurred much of the alleged past-due indebtedness. (*Id.*) Furthermore, due to the crash of the housing market, he was unable to sell either house. (TR at page 49 line 6 to page 52 line 25.) In 2009, his wife also filed for a divorce, which is still pending, that has further complicated his financial recovery effort. (TR at page 48 line 13 to page 49 line 6.)

1.a. It is alleged that Applicant is indebted to Creditor A, as the result of a judgment, in the amount of about \$36,726. (GX 2 at page 11, and GX 7 at page 1.) After making an initial payment of \$1,000 in June of 2013, Applicant is making monthly payments of \$500 towards this admitted past-due debt, as evidenced by cancelled checks. (TR at page 54 line 11 to page 55 line 10, and AppX J.) I find that Applicant is addressing this debt.

1.b. It is alleged that Applicant is indebted to Creditor B, a credit card debt, in the amount of about \$2,475. (GX 7 at page 1.) With the cooperation of his estranged wife, Applicant hopes to negotiate a settlement of this debt, but has not yet done so. (TR at page 55 line 22 to page 57 line 18.) I find that this debt is still outstanding.

1.c., 1.h. and 1.k. These are one and the same debt. It is alleged that Applicant is indebted to Creditor C, also a credit card debt, in the amount of about \$15,400~\$23,000. (GX 1 at pages 33 and 36, and GX 7 at page 2.) With the cooperation of his estranged wife, Applicant hopes to negotiate a settlement of this debt, but has not yet done so. (TR at page 57 line 20 to page 59 line 14.) I find that this debt is still outstanding.

1.d. It is alleged that Applicant is indebted to Creditor D in the amount of about \$12,577. (GX 1 at page 35, and GX 7 at page 1.) This debt has been written off as a loss by the creditor; and as such, Applicant will receive a Form 1099-C from the creditor noting taxable income of \$8,867. This is evidenced by correspondence from the creditor. (TR at page 59 lines 15~21.)

1.e. and 1.n. It is alleged that Applicant is indebted to Creditor N in the amount of about \$280,000 on the first mortgage for House #1, and to Creditor E in the amount of about \$38,710 on the second mortgage for House #1. (GX 1 at page 33, and GX 7 at page 2.) House #1 was sold by foreclosure for an amount greater than the outstanding balance; and as such, no monies are owed by Applicant on the first mortgage. (TR at page 51 line 2 to page 52 line 6, and at page 59 line 22 to page 54 line 25.) This is evidenced by a Form 1099-A from the creditor. (AppX E at page 2.) The debt owed on the second mortgage has been cancelled, as evidenced by a Form 1099-A from the creditor. (AppX E at page 2.) Applicant owes nothing vis-a-vis the mortgages on House #1.

1.f., 1.g. and 1.m. These are one and the same debt. It is alleged that Applicant is indebted to Creditor F, a credit union, in the amount of about \$14,600~\$19,200. (GX 1 at page 34, and GX 7 at pages 1 and 2.) With the cooperation of his estranged wife, Applicant hopes to negotiate a settlement of this debt, but has not yet done so. (TR at page 64 line 25 to page 65 line 23.) I find that this debt is still outstanding.

1.i. It is alleged that Applicant is indebted to Creditor I, a medical debt of his wife, in the amount of about \$244. (AppX D at pages 8~9.) With the cooperation of his estranged wife, Applicant hopes to pay this debt, but has not yet done so. (TR at page 69 line 17 to page 72 line 10.) I find that this debt is still outstanding.

1.j. It is alleged that Applicant is indebted to Creditor J, a cable TV debt of his wife, in the amount of about \$827. (GX 7 at page 1, and AppX D at pages 5~6.) With the cooperation of his estranged wife, Applicant hopes to pay this debt, but has not yet done so. (TR at page 69 line 17 to page 72 line 10.) I find that this debt is still outstanding.

1.k. It is alleged that Applicant is indebted to Creditor K in the amount of about \$589,000 on the first mortgage for House #2. (GX 1 at page 35, GX 7 at page 2, and AppX I.) House #2 was sold by foreclosure for \$467,858, as evidenced by a Form 1099-A from the creditor. (TR at page 50 lines 4~12, and AppX I.) As a result, there is

a remaining balance of about \$122,000, for which Applicant “is personally liable.” (AppX I.)

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. (AG Paragraph 2.) 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. AG Paragraph 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 significant past-due debts, which he has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant can attribute his past-due debts to the crash of the real estate market in 2008, and to his pending divorce, he has failed to act *“responsibly under the circumstances,”* as required by Subparagraph 20(b). Furthermore, Subparagraph 20(d) requires that *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Applicant has yet to address debts totaling in excess of \$155,000. Accordingly, Applicant has not met his burden of persuasion. Once he does address these debts, he may again apply for a security clearance.

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. Applicant has submitted laudable comments from those who know him in the work place (AppXs B and L), but the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. Applicant has over \$155,000 in past-due indebtedness that he has yet to address. For these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept 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.	For Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	Against Applicant
Subparagraph 1.k.	Against Applicant

Subparagraph 1l.	Against Applicant
Subparagraph 1.m.	Against Applicant
Subparagraph 1.n.	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