



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-00705
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

November 26, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on April 18, 2011. On May 22, 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 acknowledged receipt of the SOR on June 6, 2013. He answered the SOR in writing on June 17, 2013, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on August 27, 2013. 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, which is 48 pages in length, dated June 17, 2013, Applicant admitted the factual allegations in Paragraphs 1.a.~1.e. and 1.h. of the SOR, with explanations. He denied the factual allegations in Paragraphs 1.f. and 1.g. of the SOR.

Guideline F - Financial Considerations

1.a. Applicant admits that he is indebted to State A for past due taxes in the amount of about \$13,889.40, as of June 3, 2013. (Item 4 at pages 1 and 3.) He has a "Payment Agreement" with State A by which he appears to have been making monthly payments of \$349.74 since September of 2011. (Item 4 at page 2.) However, when given the opportunity to do so, Applicant has offered nothing further in response to the FORM, showing that he has continued to make any payments since June of 2013. As Applicant has not meet his burden, I find that this debt is still outstanding.

1.b. Applicant admits that he was indebted to the IRS for past due taxes in the amount of about \$8,000. (Item 4 at page 5.) He had a payment plan with the IRS by which Applicant made monthly payments of \$200 towards this tax debt. (Item 4 at pages 6~9.) He submitted documentation from the IRS showing that Applicant has paid this debt. (Item 4 at pages 10~23.)

1.c. Applicant admits that he is indebted to Creditor C for a past due debt in the amount of about \$1,921. (Item 4 at page 24.) He avers that he has "a payment plan to make a 200.00 (sic) payment by 4 July [2013] and then \$105.00 monthly." (*Id.*) Applicant submitted documentation showing an initial payment of \$200 (Item 4 at page 41); but when given the opportunity to do so, Applicant offered nothing further in response to the FORM, to show that he continued to make any payments since July of 2013. As Applicant has not meet his burden, I find that this debt is still outstanding.

1.d. Applicant admits that he is indebted to Creditor D for a past due debt in the amount of about \$7,383. (Item 4 at page 25.) He has a payment plan by which Applicant is to make a monthly payments of \$200 towards this debt. (Item 4 at page 26.) Applicant has submitted nothing showing any payments towards this admitted past due debt. I find that this debt is still outstanding.

1.e. Applicant admits that he is indebted to Creditor E for a past due debt in the amount of about \$1,520. (Item 4 at page 27.) He has a payment plan by which Applicant is to make a monthly payments of \$100 towards this debt. (Item 4 at pages 28~31 and 41.) Applicant has submitted documentation showing an initial payment of \$100 (*Id.*); but when given the opportunity to do so, Applicant offered nothing further in response to the FORM, showing that he continued to make any payments since July of 2013. As Applicant has not meet his burden, I find that this debt is still outstanding.

1.f. It is alleged that Applicant was indebted to Creditor F for a past due debt in the amount of about \$366. (Item 4 at pages 32~34.) He disputes this debt as being a fraudulent debt, and it does not appear the Government's most recent March 2013 Credit Report. (*Id.*, and Item 7.) I find that this debt is not outstanding.

1.g. It is alleged that Applicant was indebted to Creditor G for a past due debt in the amount of about \$399. (Item 4 at pages 43~45.) He also disputes this debt as being a fraudulent debt, and it does not appear the Government's most recent March 2013 Credit Report. (*Id.*, and Item 7.) I find that this debt is not outstanding.

1.h. Applicant admits that he was indebted to the Creditor H for past due taxes in the amount of about \$200. (Item 4 at page 46.) He offered documentation showing he has paid this debt. (Item 4 at page 47.) I find that this debt is not 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 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 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 debt, which he has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Accordingly, Applicant has not met his burden of persuasion.

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. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. Applicant has over \$24,000 in past-due indebtedness that he has yet to address. If he resolves these debts, he may be eligible for access to classified information in the future. 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.	Against Applicant
Subparagraph 1.b.	For Applicant
Subparagraphs 1.c.~1.e.	Against Applicant
Subparagraphs 1.f.~1.h.	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