



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



In the matter of:)	
)	
)	ISCR Case No. 12-02462
)	
)	
Applicant for Security Clearance)	

Appearances

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

October 24, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 15, 2011. On June 5, 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 20, 2013. He answered the SOR in writing on July 2, 2013, and requested a hearing before an Administrative Judge. DOHA received the request on July 8, 2013, and I received the case assignment on August 20, 2013. DOHA issued a notice of hearing on August 27, 2013, and I convened the hearing as scheduled on September 18, 2013. The Government offered Exhibits (GXs) 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibit (AppX) A, which was received without

objection. DOHA received the transcript of the hearing (TR) on September 30, 2013. I granted Applicant's request to keep the record open until September 25, 2013, to submit additional matters. On September 21, 2013, he submitted Exhibit B, which was received without objection. The record closed on September 30, 2013, the date the transcript was received. The undersigned was placed on Government wide furlough from October 1 through October 10, 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 in Subparagraphs of the SOR, with explanations.

Guideline F - Financial Considerations

In 2006, Applicant's parents divorced. (TR at page 26 line 1 to page 27 line 14.) He was 20 years old at the time, and was living at home with his mother and two younger brothers. (*Id.*, and GX 1 at pages 5, and 18~19.) His mother soon thereafter "lost her job and she was unemployed." (TR at page 26 line 1 to page 27 line 14.) Applicant tried to help out "with the mortgage so she wouldn't lose her house"; but "the economy started going down," and Applicant's work hours "dropped to 32 hours from having 40 hours, plus [the loss of] overtime." (*Id.*) This has caused Applicant's current financial difficulties.

On August 21, 2013, Applicant filed for the protection of a Chapter 7 bankruptcy. (TR at page 40 line 1 to page 42 line 5, and AppX B.) A "Meeting of Creditors . . . [was held] on September 19, 2013." (AppX B at page 2.)

1.a. Applicant is admittedly indebted to a bank for a past-due debt in the amount of about \$5,143. (TR at page 27 line 15 to page 28 line 22.) This debt has been included in Applicant's bankruptcy petition, as evidenced by his Schedule F of that petition. (AppX B at page 24.)

1.b. Applicant is admittedly indebted to a wireless phone service for a past-due debt in the amount of about \$670. (TR at page 28 line 23 to page 30 line 4.) This debt has been included in Applicant's bankruptcy petition, as evidenced by his Schedule F of that petition. (AppX B at page 25.)

1.c. Applicant is admittedly indebted to an appliance store for a past-due debt in the amount of about \$6,498. (TR at page 30 line 5 to page 31 line 10.) This debt has been included in Applicant's bankruptcy petition, as evidenced by his Schedule F of that petition. (AppX B at page 25.)

1.d. Finally, Applicant is admittedly indebted to another bank for a past-due debt in the amount of about \$12,000. (TR at page 31 line 11 to page 32 line 8.) This debt

has been included in Applicant's bankruptcy petition, as evidenced by his Schedule F of that petition. (AppX B at page 25.)

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 about 2006, when his mother was divorced and then lost her job. He tried to help out with her mortgage, as he lived under her roof, but soon thereafter his own wages were significantly reduced. 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, . . . divorce, . . .), 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 2006. 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 August 2013 bankruptcy filing.

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 A.) 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

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