



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



In the matter of:)	
)	
)	ISCR Case No. 12-02597
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: Andria Catalano Redcrow, Esquire

March 6, 2014

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 27, 2011. On October 15, 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 October 24, 2013. He answered the SOR in writing on November 12, 2013, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on January 16, 2014. DOHA issued a notice of hearing on January 24, 2014, and I convened the hearing as scheduled on February 12, 2014. The Government offered Exhibits (GXs) 1 through 6, which were received without objection.

Applicant testified on his own behalf, as did his younger daughter, and submitted Exhibits (AppXs) A through K, which were received without objection. DOHA received the transcript of the hearing (TR) on February 21, 2014. I granted Applicant's request to keep the record open until March 12, 2014, to submit additional matters. On February 25, 2014, his submission, Exhibit L, was received without objection. The submission included the following request: "The Applicant has no further exhibits to offer into evidence and requests that you [Department Counsel] forward this to the Court so that the record may be closed and a decision made." The record was thus closed on February 26, 2014. 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 the factual allegations in all the Subparagraphs of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

The 64-year old Applicant served in the South Vietnamese Navy during the Vietnam War. (TR at page 6 lines 11~16, and at page 45 lines 4~22.) He came to the United States in 1980, and became a U.S. citizen in 1998. (*Id.*)

In the 1990's, Applicant's wife developed Type II Diabetes. (TR at page 31 line 23 to page 34 line 6, and AppXs D and E.) Later, she also contracted Hepatitis C. (*Id.*) At "first for a couple of years," she took a pill, but later had "to use insulin together with the pill." (TR at page 31 line 23 to page 34 line 6, and AppXs D and E.) Her kidneys have ceased functioning, and she has been receiving dialysis for end-stage renal disease July of 2010. (*Id.*)

In 2005, Applicant was laid off from his job. (TR at page 34 lines 7~24.) His unemployment benefits were not sufficient to cover his wife's medical needs. (*Id.*) This, coupled with his spouse's life threatening illness has caused his current financial difficulties.¹ (See *also* TR at page 61 line 11 to page 64 line 17, and AppX I; the testimony of his younger daughter, and the testimonial of his older daughter, respectively.)

¹ Department Counsel argues that gambling also contributed to Applicant's current financial difficulties. Counsel points to an \$80 debt to a casino, alleged as the last Subparagraph of the SOR. Applicant attributes this debt to a casino room charge and not to gambling. (TR at page 39 line 19 to page 40 line 7, and at page 53 lines 2~6.) Counsel also points to a \$4,544 Las Vegas judgement and to an \$850 debt to a casino (both debts are listed in Applicant's Schedule F of his Chapter 7 Bankruptcy Petition, but neither is alleged in the SOR), as proof of gambling. (AppX A at pages 20 and 25.) Applicant denies this assertion. He is unaware of the judgment, but was listed in the Bankruptcy Petition in an abundance of caution. (TR at page 53 line 12 to page 59 line 5, at page 64 line 18 to page 66 line 4, and at page 68 line 20 to page 69 line 1.) He attributes the \$850 debt to a family New Years Eve celebration, food and room charges, but not to gambling. (*Id.*) Applicant's daughter corroborates his testimony. (TR at page 61 line 11 to page 64 line 17.) I find that Applicant's current financial difficulties are not attributed to gambling.

1.a.-1.p. Listed in the SOR are 16 alleged and admitted past-due debts totaling about \$58,242. Applicant filed for the protection of a Chapter 7 Bankruptcy in November of 2013, as evidenced by that filing. (AppX A at page 3.) All of the alleged past-due debts are included in Applicant's Chapter 7 Bankruptcy, as evidenced the petition's Schedule F. (TR at page 43 line 2 to page 44 line 10, at page 51 line 11 to page 52 line 15, and AppX A at pages 20~28.) He also completed the Post-Petition Instructional Course in November of 2013, as evidenced by Bankruptcy Court documents. (AppX B.) Finally, Applicant's debts were discharged on February 11, 2014, as evidenced by the "DISCHARGE OF DEBTOR" Order. (AppX L.)

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. 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 him being laid off his job in 2005, and due to his wife’s life-threatening medical condition. 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 February 2014 bankruptcy discharge.

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. (AppXs F~G.) 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
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	For Applicant
Subparagraph 1.n.	For Applicant
Subparagraph 1.o.	For Applicant
Subparagraph 1.p.	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