



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



In the matter of:)
)
) ISCR Case No. 12-05082
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Sean Bigley, Esquire

July 21, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on April 12, 2011. On July 31, 2015, 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 August 12, 2015. He answered the SOR in writing on August 20, 2015, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and assigned it to another Administrative Judge. I received the case assignment on January 7, 2016. DOHA issued a notice of hearing on January 7, 2016, and I convened the hearing as scheduled on January 29, 2016. The Government offered Exhibits (GXs) 1 through 8, which were received without objection.

Applicant testified on his own behalf, as did his current spouse, and submitted Exhibits (AppXs) A through G, which were received without objection. DOHA received the transcript of the hearing (TR) on February 3, 2016. I granted Applicant's requests, one made at his hearing and the other made after his hearing, to keep the record open until March 29, 2016, to submit additional matters. On March 28, 2016, he submitted Exhibit H, which was received without objection. The record closed on March 29, 2016. 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 Subparagraphs 1.c. and 1.d. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.a., 1.b., 1.e. and 1.f. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

Applicant is 45 years old, has an Associate's Degree, and three children, two by a former spouse. (TR at page 25 line 11 to page 26 line 4.) He has held a security clearance since 1997. (TR at page 26 lines 5~17.) He was laid off from a prior job in about 1994, and was not "gainfully employed" until September of 1995. (TR at page 27 lines 6 to page 28 line 10, and GX 1 at pages 4~5.) In 2011, his former spouse also sought additional monies from Applicant through the courts, but her case was dismissed. (TR at page 28 line 11 to page 30 line 15.) He avers that these two, unrelated, events, caused Applicant's present alleged financial difficulties.

1.a. Applicant denies that he is indebted to Creditor A for a past-due debt in the amount of about \$15,450. His former house was sold by Creditor A at a short sale, resulting in an Internal Revenue Service (IRS) Form 1099-C being issued to Applicant. (TR at page 31 line 14 to page 33 line 6, and at page 46 line 18 to page 48 line 8.) This is evidenced by that IRS Form. (AppX A at Tab 1.) This allegation is found for Applicant.

1.b. and 1.f. These are one and the same alleged past-due debt. Applicant denies that he is indebted to Creditor B for a past-due debt, as the result of a repossession of a motor vehicle, in an amount ranging from about \$20,994~\$25,200. He disputed the amount owed, and has recently settled and paid this debt for \$3,000 (TR at page 38 line 12 to page 44 line 17, and at page 56 line 20 to page 62 line 8.) This is evidenced by a letter from Creditor B, and a cashier's check for \$3,000 from Applicant. (AppX H.) This allegation is found for Applicant.

1.c. and 1.d. Applicant admits that he was indebted to the IRS, as the result of two tax liens, in an amount initially totaling about \$58,834. Since February of 2014, he has been making monthly payments of about \$600 to the IRS as evidenced by documentation from the IRS and from Applicant's bank. (TR at page 33 line 9 to page

36 line 1, at page 48 line 9 to page 56 line 19, and AppX A at Tab 3.) He presently owes about \$30,000 to the IRS. These allegations are found for Applicant.

1.e. Applicant denies that he is indebted to Creditor E for a past-due debt in the amount of about \$224,379. This is also related to the short sale of his former house. Applicant received another IRS Form 1099-C as a result of this sale. (TR at page 36 line 2 to page 38 line 10.) This is evidenced by documentation regarding the short sale of the property, and by that IRS Form. (AppX A at Tab 4.) This allegation is found for Applicant.

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 conditions that could raise security concerns. Under Subparagraphs 19(a) and 19(c) an “*inability or unwillingness to satisfy debts*” and “*a history of not meeting financial obligations*” may raise security concerns. Applicant has had substantial past-due indebtedness. However, I find a countervailing Mitigating Condition that is applicable here. Under Subparagraph 20(b), it may be mitigating where “*the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., . . . divorce or separation), and the individual acted responsibly under the circumstances.*” Applicant’s alleged past-due indebtedness can be attributed to his divorce. He has addressed all of the alleged past-due debts. He has also received financial counseling, in compliance with the mitigating condition under Subparagraph 20(c). (AppX E.) Financial Considerations is found for Applicant.

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. Applicant is highly respected in the work place. (AppXs B, D and E.) 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

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

