



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



In the matter of:

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) ISCR Case No. 15-00102
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Applicant for Security Clearance

Appearances

For Government: Gregg A. Cervi, Department Counsel
For Applicant: *Pro se*

August 11, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 27, 2014. On August 22, 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 answered the SOR in writing (Answer) on September 11, 2015, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on November 13, 2015. Applicant responded to the FORM on November 29, 2015. Department Counsel had no objection, and the documents are entered into evidence. The case was assigned to me on March 2, 2016. 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, Applicant denies the factual allegation of the single Paragraph SOR.

Guideline F - Financial Considerations

1.a. It is alleged that Applicant is indebted to Creditor A in the amount of about \$295,167, as the result of a sale of Applicant's real estate by Creditor A, at less than its original purchase price. This is evidenced by a December 2014 credit report. (Item 4 at page 1.) Applicant admits to this "short sale," and avers that his "home . . . was sold in June of 2012 for \$184,900 and the balance was charged off . . ." (Answer at page 2.) However, in the FORM, Department Counsel correctly points out that "there has been no offer of a 1099-C to show forgiveness of this debt." (FORM at page 2.) An IRS FORM 1099-C is issued to the former real estate owner when the "short sale" price is less than the mortgage owed by the debtor at the time of the "short sale," and thereby the creditor forgives any remaining mortgage amount owed. The amount on the Form 1099-C is considered income, for which Applicant would be required to pay Federal income tax. In this case, at the time of the "short sale," the amount owed was \$336,110.44. (Answer at page 3.) In response to the FORM, Applicant only submits a one page statement, but no IRS Form 1099-C. I find that this significant mortgage debt is not resolved.

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 AG 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, although given an opportunity to do so in response to the FORM, has not submitted any evidence that his remaining mortgage debt has been forgiven by the creditor. I can find no countervailing Mitigating Condition that is applicable here. Financial Considerations are found against Applicant.

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 his eligibility and suitability for a security clearance. Applicant has failed to fully respond to the Government's concerns; and as such, has failed to meaningfully address the alleged past-due debt. For this reason, 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
<p>1. The Applicant's financial statements are not audited by a certified public accountant.</p> <p>2. The Applicant's financial statements are not prepared in accordance with generally accepted accounting principles.</p> <p>3. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>4. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>5. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>6. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>7. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>8. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>9. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>10. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p>	<p>1. The Applicant's financial statements are not audited by a certified public accountant.</p> <p>2. The Applicant's financial statements are not prepared in accordance with generally accepted accounting principles.</p> <p>3. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>4. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>5. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>6. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>7. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>8. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>9. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p> <p>10. The Applicant's financial statements are not prepared in accordance with the requirements of the Uniform Accounting System for Non-Profit Organizations.</p>

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