



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



In the matter of:

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) ISCR Case No. 15-01094
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Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel

For Applicant: Ryan C. Nerney, Esquire

August 11, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 20, 2012. On September 23, 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 October 13, 2015. He answered the SOR in writing through counsel on November 24, 2015, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on March 15, 2016. DOHA issued a notice of hearing on March 16, 2016, and I convened the hearing as scheduled on April 7, 2016. The Government offered Exhibits (GXs) 1 through 7, which were received without objection. Applicant testified on his own behalf and

submitted Exhibits (AppXs) A through J, which were received without objection. DOHA received the transcript of the hearing (TR) on April 15, 2016. I granted Applicant's request to keep the record open until April 14, 2016, to submit additional matters. On April 14, 2016, he submitted Post-Hearing Exhibits (PEXs) J and K, which were received without objection. The record closed on April 14, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant denied all the factual allegations of 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

Applicant is a 62 year old "Contract Investigator," since November of 2009. (GX 2 at pages 5, and 11~13.) Prior to that from 1992~2009, he "owned a Security Guard Investigative Service business" that failed, leaving Applicant with the vast majority of the alleged past-due indebtedness. (TR at page 23 lines 2~18, and GX 2 at pages 15~16.) He testified that he had "about roughly \$850" . . . "left over, per month" as a surplus; but also submitted a monthly budget, showing a surplus of \$2,984 as of November 2015. (TR at page 47 lines 11~17, and AppX B.)

1.a. Applicant denies that he is indebted to Creditor A for a past-due, business credit card, debt in the amount of about \$3,662. This debt, which has been past due since 2012, is evidenced by the Government's most recent January 2016 credit report, with a past-due amount of \$2,190. (GX 7 at page 3.) Applicant testified and offers evidence that, two weeks prior to his hearing, he made his first monthly payment of \$100 towards this debt. (TR at page 25 line 10 to page 28 line 12.) With a monthly budgetary surplus of between \$850~\$2,984, I find that this last-minute effort, to satisfy a debt that has been past due for four years, does not constitute a "good-faith effort" to address this debt. This allegation is found against Applicant.

1.b. Applicant denies that he is indebted to Creditor B for a past-due, personal credit card, debt in the amount of about \$277. This debt "is paid in full," as evidenced by correspondence from Creditor B. (TR at page 28 line 13 to page 29 line 16, and AppX E at page 2.) This allegation is found for Applicant.

1.c.~1.f. and 1.h. Applicant denies that he is indebted to the Federal Government for delinquent payroll taxes, which are attributed to his failed business, totaling about \$72,253. These tax liens were filed in 2006, 2009, 2010 and 2011, and are evidenced by credit reports dated in February of 2007, and in June of 2012. (GXs 4 and 5.) In 2010, Applicant entered into an installment agreement with the Federal Government to make monthly payments of \$650 towards a delinquency of \$64,646.45. (AppX A.) He avers that he paid pursuant to this payment plan for about a year, but did

not have the means to continue with the payments until 2013. (TR at page 65 line 23 to page 66 line 11.) Since 2008, Applicant has been working with a financial firm to resolve these tax liens, but has yet to set up a new payment plan. (TR at page 57 line 9 to page 58 line 9, at page 59 line 9 to page 64 line 9, at page 65 line 9 to page 67 line 20, and AppX F.) I find that this eight year, drawn out, effort does not constitute a “good-faith effort” to address this debt. These allegations are found against Applicant.

1.g. Applicant denies that he is indebted to Creditor G for a past-due, business credit card, debt in the amount of about \$1,978. This debt, which was perfected by an outstanding judgment in 2013, is evidenced by the Government’s most recent January 2016 credit report. (GX 7 at page 1.) In October of 2015, through a different law firm from that which is representing him at his hearing, he agreed to make monthly payments of \$449.57 towards this judgment. (TR at page 41 line 4 to page 43 line 22, and AppX G.) However, despite having a monthly budgetary surplus of between \$850~\$2,984, Applicant testified that he “wasn’t able to make that payment at that amount.” (TR at page 42 lines 20~23.) In March of 2016, through the same law firm, he renegotiated this amount to monthly payments of \$249.70. (*Id.*, and AppX H.) He avers that, two weeks prior to his hearing, he made his first monthly, renegotiated payment towards this judgment. (TR at page 42 line 24 to page 43 line 9.) I find that this post-SOR effort, to satisfy a judgment that has been outstanding for three years, does not constitute a “good-faith effort” to address this debt. This allegation is found against Applicant.

1.i. Applicant denies that he is indebted to Creditor I for a past-due, business credit card, debt in the amount of about \$2,255. This debt has been settled to the satisfaction of Creditor I, as evidenced by correspondence from Creditor I. (TR at page 43 line 23 to page 45 line 3, and AppX E at page 1.) 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. (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 has significant past-due debt, which he has failed to demonstrate he has made a good faith effort to resolve. Despite having a significant monthly surplus in his budget, he has only satisfied two debts, has only made a last minute attempt to address two other debts by way of monthly payments, and after eight years has failed to come to an agreement with the Federal Government as to \$60,000~\$70,000 of delinquent payroll taxes. 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. Applicant does have the support of his Supervisor. (AppX D.) However, 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 address the alleged past-due debts. 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

Subparagraph 1.b. For Applicant

Subparagraphs 1.c.~1.h. Against Applicant

Subparagraph 1.i. 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