



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



In the matter of:

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) ISCR Case No. 15-01813
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Applicant for Security Clearance

Appearances

For Government: Douglas Velvel, Esquire, Department Counsel

For Applicant: *Pro se*

November 9, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 22, 2012. On August 29, 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 21, 2015, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on December 21, 2015. Applicant did not respond to the FORM. The case was assigned to me on May 11, 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 admitted the factual allegations in all the Paragraphs of the SOR, with explanations.

Guideline F - Financial Considerations

Applicant is a 37-year-old "Rotary Wing Mechanic." (Item 2 at pages 5 and 12.)

1.a. Applicant admits that he is indebted to Creditor A for a past-due debt in the amount of about \$21,452. Applicant avers that he "cosigned for a family member to attend school." (Answer at page 1.) He further avers: "She is currently and has been paying since June of 2013. I do not make any payments on this loan." (*Id.*) As this rather substantial debt still appears as "Past Due: \$19,239" on the Government's most recent December 18, 2015 credit report; I find that it is not current as alluded to by Applicant, but still past due. (Item 4 at page 3.) This allegation is found against Applicant.

1.b. Applicant admits that he is indebted to Creditor B for a past-due debt in the amount of about \$4,688. Applicant avers: "It is the remainder of my car payments. My car was repossessed in 2009 after losing my job. Soon I will be starting settlement payments on this." (Answer at page 1.) As Applicant has submitted nothing further in this regard; despite having nearly eight months to do so (from his September 2015 Answer to the undersigned May 2016 assignment), this allegation is found against Applicant.

1.c. Applicant admits that he is indebted to Creditor C for a past-due debt in the amount of about \$3,704. Applicant avers: "That debt has been settled and paid in full in the amount of \$2,544.22." He has also submitted documentation in support of this averment. (Answer at page 2.) This allegation is found for Applicant.

1.d. Applicant admits that he is indebted to Creditor D for a past-due debt in the amount of about \$2,398. Applicant avers: "This will be settled on shortly." (Answer at page 1.) As Applicant has submitted nothing further in this regard; despite having nearly eight months to do so, this allegation is found against Applicant.

1.e. Applicant admits that he is indebted to Creditor E for a past-due debt in the amount of about \$2,506. Applicant avers: "This too will be settled on shortly." (Answer at page 1.) As Applicant has submitted nothing further in this regard; despite having nearly eight months to do so, this allegation is found against 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. These may be mitigated by Subparagraph 20(b) where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment . . .), and the individual has acted responsibly under the circumstances.”* Although Applicant can attribute his financial difficulties to “losing . . . [his] job” in 2009, he was given an opportunity to submit documentation of responsible action on his delinquent debts in response to the FORM. He has not submitted any evidence that he has addressed his admitted past-due debts, alleged in Subparagraphs 1.a., 1.b., 1.d. and 1.e. Therefore, 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 Applicant’s 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
Subparagraphs 1.a. and 1.b.	Against Applicant
Subparagraph 1.c.	For Applicant
Subparagraphs 1.d. and 1.e.	Against 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