



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



In the matter of:

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) ISCR Case No. 15-02522
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Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esquire, Department Counsel

For Applicant: *Pro se*

November 17, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 16, 2014. On February 26, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 March 18, 2016. He answered the SOR in writing (Answer) on April 4, 2016, 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 May 23, 2016. DOHA issued a notice of hearing on May 25, 2016, and I convened the hearing as scheduled on June 23, 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 C, which were received without objection. DOHA received the transcript of the hearing (TR) on July 1, 2016. I granted Applicant's request to keep the record open until July 22, 2016, to submit additional matters. On July 21, 2016, he submitted Exhibit D, which was received without objection. The record closed on July 22, 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 denied the factual allegations in all the Subparagraphs of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Guideline F - Financial Considerations

Applicant is a 38-year-old "Warehouse Specialist." (GX 1 at pages 5 and 9.) He served honorably in the U.S. Navy from 1996~2001. (TR at page 29 lines 6~13, and AppX A the last page.) He has a college degree in business management. (TR at page 29 lines 14~20.) He has been married since January of 2011, and has a 16-year-old "daughter from a previous relationship." (TR at page 29 line 21 to page 30 line 4.)

He attributes his past financial difficulties vis-a-vis his student loans (Subparagraphs 1.a. and 1.b.), to being unemployed or underemployed after his college graduation, until his present employment in about June of 2014. (TR at page 33 lines 2~11, and GX 1 at page 10.)

1.a. and 1.b. Applicant denies that he is indebted to Creditor A, for student loans, in the alleged past-due amount of about \$10,712. Because of his tenuous employment situation prior to June of 2014, Applicant thought his student loans were deferred. (TR at page 41 lines 1~23.) He was unaware of their delinquency until confronted by a government investigator in July of 2014. (GX 3.) Applicant's credibility is attested to by those who know him who work in law enforcement, and by those who know him in the community. (AppX D at pages 1~6.) These student loan debts were consolidated, settled for \$4,600, and paid in March of 2016, as evidenced by banking documents, correspondence with a debt consolidation organization specializing in student loans, and by correspondence with the U.S. Department of Education. (TR at page 63 line 2 to page 64 line 9, at page 68 lines 7~25, at page 74 line 11 to page 75 line 8, Answer at page 5, AppX A at pages 1~6, 10 and 11, and AppX C.) I find that Applicant has made a good-faith effort to address these alleged past-due debts.

1.c. Applicant denies that he is indebted to Creditor C, for a credit card, in the alleged past-due amount of about \$285. Unbeknownst to Applicant, his spouse added his name to her credit card. (TR at page 75 line 9 to page 77 line 16.) As a result, Creditor C has "Deleted . . . [Applicant] as an authorized user from the credit bureau report," and it does not appear on the Government's most recent May 2016 credit

report. (AppX A at page 13, and GX 7.) I find that Applicant has made a good-faith effort to address this alleged past-due debt.

1.d. Applicant denies that he is indebted to Creditor D, for satellite television (TV) service, in the alleged past-due amount of about \$651. Applicant was the victim of identity theft; and as such, protested the validity of this debt to Creditor D. (TR at page 77 line 17 to page 79 line 9.) This dispute was successful, and Creditor D avers “it has been determined that . . . [Applicant] will not be held responsible or liable for the billing on this account.” (AppX A at page 8.) I find that Applicant has made a good-faith effort to address this alleged past-due debt.

Guideline E - Personal Conduct

2.a. Applicant denies that he deliberately failed to disclose the before-mentioned student loans, and the alleged satellite television service debt, in answer to **Section 26: Financial Record: Delinquency Involving Routine Accounts**, on his June 2014 e-QIP. (GX 1 at page 34.) I find that he testified credibly that he was unaware of the student loans delinquencies, thinking their payment was deferred. Furthermore, he was clearly the subject of identity thief vis-a-vis the TV debt; and as such, had no knowledge of the fraudulent debt.¹ This allegation is found for Applicant.

2.b. Applicant denies that he deliberately failed to disclose a December 2000 charge for Driving Under the Influence (DUI) of Alcohol/Drugs, in answer to the second part of **Section 22: Police Record**, on his June 2014 e-QIP. (GX 1 at page 31.) I find that he testified credibly that, in light of the first part of Section 22, he thought he only had to go back to “**the past seven (7) years**” in his disclosures. (TR at page 81 line 7 to page 87 line 3.) (He was admittedly charged with a DUI 13 plus years prior to executing his e-QIP.) Applicant’s credibility is attested to by those who know him who work in law enforcement, and by those who know him in the community. (AppX D at pages 1~6.) 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

¹Failure to disclose his wife’s debt in Subparagraph 1.c. is not alleged in this allegation.

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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance 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 adverse 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 had significant past-due student loans. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Subparagraph 20(b) applies where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. loss of employment . . .), and the individual acted responsibly under the circumstances.”* Applicant’s past-due student loans were directly attributable to his unemployment or underemployment until he was hired in his current position. Subparagraph 20(c) applies where *“there are clear indications that the problem is being resolved or is under control.”* Subparagraph 20(d) applies where the evidence shows *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Applicant is current with his student loans. Financial Considerations are found for Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 15: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”

Disqualifying Condition Subparagraph 16(a) applies where there is a *“deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations”* I find no wilful falsification here. Applicant did not intentionally falsify his e-QIP.

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. Those who know him who work in law enforcement, and those who know him in the community, speak most highly of Applicant. (AppX D at pages 1~6.) The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has mitigated the security concerns arising from his alleged Financial Considerations and Personal Conduct.

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

Subparagraphs 1.a.~1.d.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a. and 2.b.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge