



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



In the matter of:

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) ISCR Case No. 15-02709
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Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

November 2, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on July 31, 2012. On December 15, 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 on January 13, 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 March 28, 2016. DOHA issued a notice of hearing on April 6, 2016, and I convened the hearing as scheduled on May 5, 2016. The Government offered Exhibits (GXs) 1 through 5, which were received without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on May 11, 2016. I granted

Applicant's requests, one made at his hearing and the other made after his hearing, to keep the record open until July 5, 2016, to submit additional matters. On July 5, 2016, he submitted Exhibit (AppX) A, which was received without objection. As the undersigned was on leave on July 5th, the record closed on July 11, 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 admitted the factual allegations in all the Subparagraphs of the SOR, with explanations.

Guideline F - Financial Considerations

Applicant is a 56 year old "Engineer," who has worked for his current employer since June of 1986. (GX 1 at pages 5 and 11, see *also* TR at page 16 lines 5~25.) He attributes much of his financial difficulties to his spouse losing her job "around 2011 or 2012." (TR at page 17 line 1 to page 18 line 5.) She only obtained a full-time job just before the hearing. (TR at page 31 lines 13~16.)

1.a. Applicant admits that he is indebted to Creditor A for a past-due debt in the amount of about \$7,480. In February of 2016, Creditor A made a settlement offer to Applicant, which included monthly payments of \$75.42. (AppX A at page 6.) Applicant avers that he has accepted this settlement, but offers nothing further in this regard such as documentation showing payments. I find that this debt is still past due, and that Applicant has yet to reasonably address said debt.

1.b~1.g. Applicant admits that he is indebted to six other creditors for past-due debts totaling about \$17,931. In an unsworn statement he avers, in part, "I am not trying to avoid my financial responsibility. I am working on clearing my debt." (AppX A at page 1.) He also avers that, as to allegation 1.f., "Judgment Paid off," where no such judgment is alleged. (See *also* TR at page 27 lines 1~6.) I find that these debts are still past due, and that Applicant has yet to reasonably address said debts.

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 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 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 not yet resolved. 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. He is well respected both at work and in his community. (AppX A at pages 2 and 5.) However, 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 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

Subparagraphs 1.a.~1.g. 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