



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



In the matter of:)	
)	
)	ISCR Case No. 14-06207
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

November 2, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on November 13, 2010. On March 17, 2015, 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 April 1, 2015. He answered the SOR in writing on April 21, 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 June 16, 2015. DOHA issued a notice of hearing on July 2, 2015, and I convened the hearing as scheduled on August 13, 2015. The Government offered Exhibits (GXs) 1 through 6, which were received without objection. Applicant testified on his own behalf. DOHA received the transcript

of the hearing (TR) on August 25, 2015. I granted Applicant's requests, one made at his hearing and one made after his hearing, to keep the record open until October 14, 2015, to submit additional matters. On October 14, 2015, he submitted Exhibits (AppXs) A~C, which were received without objection. The record closed on October 14, 2015. 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 admitted the factual allegations in Subparagraphs 1.d., and 1.h. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.a.~1.c., 1.e.,~1.g., 1.i. and 2.a. 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 34 year old employee of a government contractor. (TR at page 17 line 9 to page 18 line 22.) This is his first time applying for a security clearance. (TR at page 18 line 23 to page 20 line 5.) He attributes his financial difficulties to two failed marriages. (TR at page 20 to page 23 line 15, and AppX C at page 10.)

1.a. and 1.b. Applicant has filed both his Federal and state income tax returns for tax years 2011 and 2012. (TR at page 23 line 16 to page 27 line 1.) This is evidenced by documentation from those taxing authorities. (AppX B at pages 1~5, and 10~12.) In an abundance of caution, he has also submitted documentation showing he has also filed for tax years 2013 and 2014. (AppX B at pages 6~9.) These allegations are found for Applicant.

1.c. Applicant was past due to his state taxing authority, for tax year 2011, in the amount of about \$2,190. He is now current with his state taxing authority; and as such, its "Withholding Order" to cover back taxes due is "Withdrawn." This is evidenced by documentation from the state taxing authority. (AppX B at pages 10~12.) This allegation is found for Applicant.

1.d. In 2006, Applicant's motor vehicle was voluntarily repossessed as he had to repeatedly replace it's engine. (TR at page 30 line 5 to page 33 line 10.) According to the Government's most recent, June 2015 credit report, the creditor was satisfied with this repossession, as it is noted as "Paid and Closed" with a "\$0" past-due amount. GX 6 at page 5.) This allegation is also found for Applicant.

1.e. Applicant denies that he is indebted to Creditor E in the amount of about \$987. He disputes this debt as being that of his deceased grandfather, who's name is the same as Applicant's, except for one letter in their middle names. (TR at page 33 line 11 to page 35 line 11.) Applicant's middle name is "Lee," while that of his grandfather is "Leo." This is evidenced by a formal dispute letter, and his grandfather's "Certificate of Death." (AppX C at pages 1, 2 and 8.) Furthermore, all of his debts to

Creditor E, as they appear on the Government's credit report, note a past due amount of "\$0." (GX 6.) This allegation is found for Applicant.

1.f. Applicant denies that he is indebted to Creditor F in the amount of about \$147. He disputes this debt as not being his debt, as evidenced by a formal dispute letter. (TR at page 35 line 12 to page 36 line 18, and AppX C at page 3.) Furthermore, this debt does not appear on the Government's most recent credit report. (GX 6.) This allegation is found for Applicant.

1.g. Applicant denies that he is indebted to Creditor G in the amount of about \$160. He disputes this debt as not being his debt, as evidenced by a formal dispute letter. (TR at page 36 line 19 to page 37 line 17, and AppX C at page 4.) Furthermore, this debt does not appear on the Government's most recent credit report. (GX 6.) This allegation is found for Applicant.

1.h. Applicant admits that he was indebted to Creditor H in the amount of about \$644. He has paid this debt, as evidenced by documentation from Creditor H. (TR at page 37 line 18 to page 38 line 15, and AppA C at pages 5~7.) This allegation is found for Applicant.

1.i. Applicant denies that he is indebted to Creditor I in the amount of about \$126. He disputes this debt as being that of his deceased grandfather, as evidenced by a formal dispute letter. (TR at page 38 line 16 to page 39 line 14, and AppX C at page 9.) Furthermore, this debt does not appear on the Government's most recent credit report. (GX 6.) This allegation is found for Applicant.

Guideline E - Personal Conduct

2.a. Applicant denies that he failed to cooperate with his personnel security investigation. (TR at page 39 line 15 to page 44 line 2.) He avers that as this was the first time he applied for a security clearance, he was unaware of what information was expected of him. (*Id.*) He did provide candid responses on 14 of the 15 pages of his written interrogatories, and he was most candid at his hearing. (On page 10 of said interrogatories, he failed to fully address unfounded psychological issues averred to by his estranged former spouse.) His good character is also attested to by those who know Applicant in the workplace. (AppX A.) 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 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 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 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 indebtedness. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination. Subparagraph 1(g) is not applicable, as Applicant has filed his *“annual Federal, state, or local income tax returns as required,”* albeit in an untimely manner.

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. . . . divorce . . .), and the individual acted responsibly under the circumstances.”* Applicant’s past-due debts are directly attributable to his divorces. 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 has addressed all of his admitted past-due debts, and has successfully contested those debts that were his deceased grandfather’s. 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.”

I find no Disqualifying Condition that is applicable here. This was the first time Applicant has applied for a security clearance. Once he realized the gravity of his situation, he was fully cooperative with the Government’s inquires at his hearing. Personal Conduct is found for 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. Those who know Applicant in the workplace speak most highly of him. (AppX A.) 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 Consideration 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.i.	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.	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