



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



In the matter of:)
)
) ISCR Case No. 14-07035
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: Selisa Wright, Personal Representative

May 2, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 8, 2013. On June 16, 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 July 17, 2015, and requested a hearing before an Administrative Judge (AJ). The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter. This case was originally assigned to another AJ on October 21, 2015. I received the case assignment on January 4, 2016. DOHA had already been issued a notice of hearing on December 28, 2015, and I convened the hearing as scheduled on January 22, 2016. The Government offered Exhibits (GXs) 1 through 5, which were received without objection. Applicant

testified on his own behalf and submitted Exhibits (AppX) A , which was received without objection. DOHA received the transcript of the hearing (TR) on January 28, 2016. I granted Applicant's request to keep the record open until February 22, 2016, to submit additional matters. On February 22, 2016, he submitted Post-Hearing Exhibits (PHXs) A through I, which were received without objection. The record closed on February 22, 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 Subparagraphs 1.a., 1.c., and 1.f. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.b., 1.d., 1.e. and 1.g.~1.i. 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 45 year old "Federal Contractor." (GX 1 at pages 5 and 9.) He attributes his current financial difficulties to periods of unemployment: July 2011 to May 2012, November 2009 to January 2011, February 2007 to April 2007, and December 2005 to February 2006. (GX 1 at pages 12, 13, 16 and 17.)

1.a. Applicant admits that he is indebted to Creditor A for a past-due debt in the amount of about \$1,040. As a bare minimum, he was aware of this debt since June of 2015, with the issuance of the SOR. Despite this more than six months of notice, Applicant only addressed this debt the day before his hearing by setting up a payment plan. (TR at page 17 line 17 to page 19 line 9, and PHX A.) This is too little too late; and as such, this allegation is found against Applicant.

1.b. Applicant initially denied but now admits that he is indebted to Creditor B for a past-due debt in the amount of about \$869. As a bare minimum, he was also aware of this debt since June of 2015, with the issuance of the SOR. Despite this more than six months of notice, Applicant, again, only addressed this debt the day before his hearing by setting up a payment plan. (TR at page 19 line 10 to page 20 line 7, and PHXs B and C.) This is too little too late; and as such, this allegation is found against Applicant.

1.c. and 1.g. These appear to be the same admitted debt to Creditor C in the amount of \$286. Applicant paid this debt 12 days before his hearing. (TR at page 20 line 8 to page 21 line 3.) This is evidenced by a letter from a representative of Creditor A. (PHX D.) I find that Applicant has addressed this debt.

1.d. and 1.h. These appear to be the same 2012 tax lien to State D in the amount of \$1,841. Applicant admits that has known about this tax lien since at least 2013, more than two years ago. (TR at page 22 lines 9~18.) Twenty days prior to his

hearing Applicant has decided to dispute this tax lien. (PHX E.) This is too little too late; and as such, this allegation is found against Applicant.

1.e. Applicant denies that he is indebted to Creditor E, as the result of a 2007 foreclosure, in the amount of about \$68,079. (TR at page 23 line 18 to page 28 line 18.) In support of this averment, he has submitted a letter from the Creditor showing that nothing is past-due. (PHX F.) I find that this debt is not past due.

1.f. Applicant admits that he owes back child support; but not in the amount of \$14,863 as alleged, for his two children with his former spouse. (TR at page 29 line 25 to page 43 line 15.) He has submitted documentation showing he still owes \$159.05 as to his oldest child, and \$10,794.79 as to his youngest child. (PHX G at pages 6 and 15.) He also owes an additional \$373.91 to the state for his youngest child. (PHX G at page 15.) This allegation is found against Applicant.

1.g. and 1.h. have already been discussed, above.

1.i. Applicant initially denied but now admits that he is indebted to Creditor I for a past-due debt in the amount of about \$185. He settled this debt with the Creditor for \$144.75 to be paid on "Jan 14, 2016." (AppX A at attachment 7.) He has submitted nothing further in this regard confirming said payment; and as such, 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 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 a tax lien, back child support and past-due debts, which he has not yet realistically addressed.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant now attributes his history of financial difficulties to past periods of unemployment, he has been employed since May of 2012, nearly four years, yet has

failed to act “*responsibly under the circumstances*,” as required by Subparagraph 20(b) with respect to his debt. Furthermore, Subparagraph 20(d) requires that “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Finally addressing a past-due debt the day before his hearing is not a good-faith effort. Accordingly, Applicant has not met his burden of persuasion.

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 an outstanding tax lien, significant back child support, and past-due debts, which he has yet to realistically address. For these reasons, 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.	Against Applicant

Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	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