



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



In the matter of:)
)
) ISCR Case No. 14-03732
)
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

October 15, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 3, 2014. On September 6, 2014, 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 24, 2014, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on April 9, 2015. Applicant responded to the FORM (Response) on June 16, 2015. Department Counsel had no objection, and the documents are entered into evidence. The case was assigned to me on July 21, 2015. 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 denied the factual allegations in all the Subparagraphs of the SOR, with explanations.

Guideline F - Financial Considerations

Applicant is a 46 year old government contractor. (Item 3 at page 5.) He avers that he “was a credit card fraud victim,” and that he “did not make the majority of the charges that totaled the balances due on each” alleged past-due debt. (Item 2 at page 1, emphasis in original.) His claim of identity theft is supported by correspondence from his medical provider: i.e., that its “IT system” was compromised. (Response at pages 1~2.)

1.a. It is alleged that Applicant in indebted to Creditor A as the result of a judgment in the amount of about \$13,354. This allegation is supported by an April 2015 credit report. (Item 5 at page 1.) Applicant unsuccessfully disputed this judgement as evidenced by court documents. (Answer at pages 2~9.) His “Motion to Vacate Judgment was denied.” (Answer at pages 10~11.) Although he continues to dispute this judgment with credit reporting services (Response at pages 5~7); and Creditor A has written-off this debt as a business loss, I find that this judgment is still outstanding. This allegation is found against Applicant.

1.b., 1.c. and 1.d. It is alleged that Applicant in indebted to Creditor B for past-due debts totaling about \$17,598. This allegation is supported by an April 2015 credit report. (Item 5 at pages 2~3.) Creditor B sued Applicant in this regard; but it was dismissed without prejudice, the “action having been amicably adjusted by and between the parties.” This is evidenced by a court order. (Answer at page 25.) Applicant offered to settle these debts for \$2,250, as evidenced by a letter to Creditor B. (Answer at page 26.) Creditor B, through counsel, has counter offered to accept \$3,213 as payment of only one of the three alleged past-due debts, allegation 1.c.. (Answer the last page.) As nothing further follows, I find that these debts is still outstanding.

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. Applicant has significant past-due debts and an outstanding judgment, which he has not yet resolved. He disputes an unspecified

“majority” of the alleged debts, but has yet to address those that he admits are his. I can find no countervailing Mitigating Condition that is applicable here.

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 her 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 and outstanding judgment. 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
Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	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