



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



In the matter of:)	
)	
)	ISCR Case No. 14-06009
)	
)	
Applicant for Security Clearance)	

Appearances

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

December 21, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 10, 2013. On January 21, 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 acknowledged receipt of the SOR on February 5, 2015. He answered the SOR in writing on February 17, 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 July 31, 2015. DOHA issued a notice of hearing on August 13, 2015, setting this matter for hearing on September 15, 2015. However, for good cause shown, Applicant asked that the hearing be continued, and I convened the hearing as re-scheduled on October 27,

2015. The Government offered Exhibits (GXs) 1 through 7, which were received without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on November 4, 2015. I granted Applicant's requests to keep the record open until December 11, 2015, to submit additional matters. On November 6, 2015, and on December 8, 2015, he submitted Exhibits (AppXs) A~C, which were received without objection. The record closed on December 11, 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.a.~1.d. of the SOR, with explanations. He denied the factual allegations in Subparagraph 1.e. 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 41 year old part-time college professor, who also works for government contractor. (TR at page 17 line 7 to page 18 line 12.) He has one child by his former spouse, and four other children out of wedlock. (TR at page 19 lines 2~25.) The vast majority of the alleged past-due debt is child support arrearage.

1.a.~1.c. Applicant admits that he is indebted to County A for child-support arrearage as to three children totaling about \$162,000. (TR at page 25 line 18 to page 30 line 22.) All but about \$14,000 of this alleged back child-support is interest. (*Id.*, and TR at page 36 lines 7~21.) He is making a monthly payment of \$1,256.31 towards these debts, as evidenced by payroll documentation (AppX A at pages 2~3); and through a "Co-Op Program," hopes to get the interest inflated total amount due reduced to \$14,951, as evidenced by documentation from County A. (AppX A at pages 4~7.) I find that Applicant is making a good-faith effort to address these debts.

1.d. Although Applicant admits the child-support claim by County A for an additional \$3,372, he denies that the child is his. (Tr at page 22 line 14 to page 24 line 6.) He has consistently disputed this alleged debt as evidenced by the Government's June 2013 and July 2014 credit reports. (GX 4 at page 8, and GX 5 at page 1.) It is also noteworthy that this allegation does not appear as past due on the Government two most recent July 2015 and October 2015 credit reports. (GX 6 at page 5, and GX 7 at page 6.) I find that Applicant has successfully disputed, and thereby addressed, this alleged debt.

1.e. Applicant denies that he is indebted to Creditor E for security system in the amount of about \$1,309. (GX 4 at page 12.) Since executing his May 2013 e-QIP, he has averred that the security system "didn't work"; and as such, was disputing it. (AppX C at page 14.) Furthermore, this disputed debt does not appear on the Government's

last three credit reports dating back to July of 2014. (GXs 5~7.) I find that Applicant has successfully disputed this alleged debt.

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 has had difficulty meeting his financial obligations. However, under Subparagraph 20(d), it may be mitigating where *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Applicant has made a good-faith effort to resolve all of the alleged past-due debts. Furthermore, Subparagraph 20(e) is also mitigating as Applicant has successfully disputed *“legitimacy”* of two of the five alleged past-due debts.

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of Applicant’s conduct and all the circumstances. Under 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. Applicant is highly respected in the workplace. (AppX B.) The record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant has mitigated the security concerns arising from his Financial Considerations, under the whole-person concept.

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.e. For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge