



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



In the matter of:)	
)	
)	ISCR Case No. 15-00652
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Chris Monge, Esquire

May 5, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on May 12, 2014. On August 18, 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 August 31, 2015. He answered the SOR in writing through counsel on September 14, 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 November 10, 2015. This hearing was originally scheduled for December 21, 2015. However, I granted Applicant's request for a delay until January 28, 2016, in order for his counsel to be available. DOHA issued an amended notice of hearing on December 10, 2015, and I

convened the hearing as scheduled on January 28, 2016. The Government offered Exhibits (GXs) 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AppXs) 1 through 5, which were received without objection. DOHA received the transcript of the hearing (TR) on February 3, 2016. I granted Applicant's request to keep the record open until February 29, 2016, to submit additional matters. On February 24, 2016, he submitted Post-Hearing Exhibits (PHXs) 1 through 3, which were received without objection. The record closed on February 29, 2016. 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.c.-1.f, 1.i. and 1.j. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.b., 1.g. and 1.h. of the SOR.

Guideline F - Financial Considerations

Applicant is a 50-year old retired U.S. Air Force First Sergeant, who has held a security clearance since the age of 18. (TR at page 20 line 7 to page 22 line 19, at page 39 line 22 to page 42 line 22 and GX 1 at page 5.) As a contractor, he has been employed since May of 2005 as a "logistics engineer." (GX 1 at page 10.) "Around the end of 2012," his current spouse lost her employment; and with it, about "\$100K" in income. (TR at page 22 line 20 to page 24 line 24, and at page 26 line 9 to page 27 line 9.) This significant loss of income has caused Applicant's current financial difficulties. (Id.)

1.a. and 1.f. Applicant admits that he is indebted to Creditor A for two past-due debts totaling about \$21,759. (TR at page 25 line 1 to page 26 line 8, and at page 27 line 10 to page 29 line 21.) Since September of 2015, he has been making monthly payments of \$200 to Creditor A pursuant to a payment plan. (Id.) This is evidenced by Applicant's bank records. (AppXs 1 and 2.) I find that Applicant is making a good-faith effort to address these debts.

1.b. Applicant initially denied a past-due debt to Creditor B, as the result of a judgment against his former spouse, in the amount of about \$9,805. (TR at page 30 line 2 to page 31 line 9, and at page 43 line 13 to page 44 line 4.) Since being informed of his community property liability vis-a-vis his former spouse's debts, incurred during their marriage, he has begun making monthly payments of \$50 towards this judgment. This is evidenced by his bank records. (PHX 3.) I find that Applicant is making a good-faith effort to address this debt.

1.c. Applicant admits that he is indebted to Creditor C for about \$335. (TR at page 33 line 12 to page 34 line 20, and at page 35 line 18 to page 36 line 7.) He states he has settled this debt for \$201.13, and also avers that he has paid this it. (Id.) He

has also submitted documentation in this regard. (AppX 5). I find that Applicant has made a good-faith effort to address this debt.

1.d. and 1.i. These are one and the same past-due debt to Successor Creditor D in the amount of about \$2,977. (TR at page 36 line 8 to page 37 line 15.) Since June of 2015, more than two months prior to the issuance of the SOR, Applicant has been making monthly payments of \$150 towards this admitted past-due debt. (*Id.*, and AppX 4.) This is evidenced by correspondence from the Successor Creditor showing a remaining balance of \$1,750 as of January 4, 2016. (AppX 4.) I find that Applicant is making a good-faith effort to address this debt.

1.e. and 1.j. These are also one and the same past-due debt to Successor Creditor D in the amount of about \$2,358. (TR at page 36 line 8 to page 37 line 15.) Since April of 2015, more than three months prior to the issuance of the SOR, Applicant has been making monthly payments of \$75 towards this admitted past-due debt. (*Id.*, and AppX 3.) This is evidenced by correspondence from the Successor Creditor showing a remaining balance of \$1,682 as of December 28, 2015. (AppX 3.) I find that Applicant is making a good-faith effort to address this debt.

1.g. Applicant denies that he is indebted to Creditor G for about \$280. (TR at page 38 line 2 to page 39 line 1.) He has paid this debt as evidenced by documentation from Creditor G. (PHX 2). I find that Applicant has addressed this debt.

1.h. Applicant denies that he is indebted to Creditor H for about \$54. (TR at page 39 lines 2~15.) He has formally disputed this debt as evidenced by correspondence to the three major credit reporting services. (PHX 1). I find that Applicant is making a good-faith effort to address this debt by disputing it.

1.i. and 1.j. have already been discussed, above.

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 a condition that could raise security concerns. Under Subparagraphs 19(a) and 19(c) an “*inability or unwillingness to satisfy debts*” and “a

history of not meeting financial obligations” may raise security concerns. Applicant has had substantial past-due indebtedness. However, I find a countervailing Mitigating Condition that is applicable here. Under Subparagraph 20 (b), it may also be mitigating where “*the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment . . .), and the individual acted responsibly under the circumstances.*” Applicant’s spouse lost her job, resulting in a substantial loss of income, but he has now addressed all of the alleged past-due debt. Financial Considerations is found for Applicant.

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. 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
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant

Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	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