



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



In the matter of:)	
)	
)	ISCR Case No. 14-06490
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

April 26, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 19, 2012. On July 24, 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 3, 2015. He answered the SOR in writing (Answer) on August 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 16, 2015. As this hearing was to be by Video Teleconferencing (VTC) from Korea, a VTC site had to be coordinated. Once coordinated, DOHA issued a notice of hearing on January 6, 2016, and I convened the hearing as scheduled on January 21, 2016. The

Government offered Exhibits (GXs) 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Exhibit (AppX) A, which was received without objection. DOHA received the transcript of the hearing (TR) on January 29, 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 Exhibit B, which was 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 granted.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in all the Subparagraphs 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 49 year old "Senior Systems Engineer," who works for a government contractor in Korea. (GX 1 at page 5, and AppX B.)

1.a~1.e. It is alleged that "[a]s of the date of the State of Reasons," July 24, 2015, Applicant's "Federal tax return[s]" for tax years 2008~2011 "had not been filed," and that he owed monies for tax year 2008. He denied these allegations; and in his Answer and his Exhibit A, Applicant demonstrated that he filed all of these returns, albeit late, in November of 2012. He has also demonstrated that there is no outstanding balance, accrued interest or penalty owed. (TR at page 21 line 11 to page 22 line 12, and AppX A.) Applicant testified that he was suffering from a "misperception about having to file taxes even though you may not owe and that there would be no penalty." (TR at page 16 lines 16~18.) He has since filed his Federal income tax returns in a timely fashion. (TR at page 20 line 22 to page 21 line 4.)

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 Subparagraph 19(g) “*failure to file annual Federal, state . . . income tax returns as required*” may raise security concerns. Applicant failed to file several years of tax returns in a timely fashion. However, I find a countervailing Mitigating Condition that is applicable here. Under Subparagraph 20 (d), it may also be mitigating where “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Applicant filed his delinquent income tax returns more than three years ago, and is current with the Federal taxing authority. 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. His “Program Manager” speaks most highly of Applicant. (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
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

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