



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 06-15685
 SSN:)
)
 Applicant for Security Clearance)

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: David S. Grossman, Esquire

January 31, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 8, 2004. On February 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR (RSOR) in writing on September 12, 2007, and requested a hearing before an Administrative Judge. I received the case assignment on November 1, 2007. DOHA initially issued a notice of hearing on November 8, 2007, and I convened the hearing as scheduled on November 26, 2007. Because of difficulties with his first attorney, Applicant had engaged a new attorney shortly before the hearing. Since his new attorney did not have all of the relevant documents, when he appeared at the first hearing, the case was continued. A new notice of hearing was issued on

November 28, 2007, and I convened the hearing for a second time on Jan 8, 2008. The Government offered Exhibits (Ex.) 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through G, without objection. DOHA received the transcript of the hearing (Tr.) on January 17, 2008. I granted Applicant's request to keep the record open until January 22, 2008, to submit additional matters. He timely submitted five character letters and three additional letters regarding his finances, which have been marked collectively as Exhibit H, and entered into evidence without objection. The record closed on January 22, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his RSOR Applicant admitted SOR allegations 1.a., 1.c., 1.d., and 1.e., and he denied 1.b., 2.a., and 2.b. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 44 years old. He is currently married and was married once before, and he has two children and one stepchild. He served in the United States Navy from 1982 to 2003

Applicant works for defense contractors, and he seeks a DoD security clearance in connection with his employment in the defense sector.

The SOR lists 5 allegations regarding financial difficulties under Adjudicative Guideline F. All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$1,340. Applicant testified that this debt resulted from medical treatment received by his daughter, when she was with his former wife. He had insurance that would have paid this bill, but his former wife never notified him so that he could submit it to the insurance carrier for payment. In 2005 he learned of this bill and submitted it to his insurer, but unbeknownst to him it was not resolved. He resubmitted it when he learned it was still outstanding, and his insurance company sent him a statement (Exhibit A) establishing that they paid \$713.52 on the claim, leaving an outstanding balance of \$178.38 that Applicant is to pay. While Applicant believed that the insurance company should have paid the entire amount, as he was active duty military at the time of the claim, he indicated that he would pay the \$178.38 once he has ascertained whether it should be reimbursed to the health care provider or to the collection agency. In a post hearing document, (Exhibit H), Applicant submitted a letter from the carrier explaining that there had been some communication problems between the carrier and the health provider,

which was the reason for the delay in payment, but at no time was it the fault of Applicant. I find that Applicant has acted responsibly and made a good faith attempt to resolve this debt, and that this debt is or will be paid shortly.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$71. Applicant testified that he was unaware of this debt. He has contacted the creditor three or four times, giving them his social security number and his previous home address, but they have no record of this debt. Applicant indicated that he would resolve this debt if it could be identified by the creditor. I find that Applicant has acted responsibly and made a good faith attempt to resolve this debt.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$9,784. Applicant acknowledged that this had been a debt of his former wife and him, but he has yet to pay this debt. In a post hearing document, (Exhibit H), Applicant submitted a letter from the creditor establishing that they would accept a payment of \$6,150.29 by February 2, 2008, as settlement in full on this debt. At the hearing, Applicant testified that his current wife has been involved in a workers compensation lawsuit, as she has been off work since August 2004, from a back injury. They are anticipating a payment as this case was set to be heard on January 29, 2008. His wife is also in the process of receiving a lump sum payment of approximately \$31,000 as a pension payment from her former employer (Exhibit G). Applicant plans to use proceeds from either of these sources to settle this debt.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$2,111. Applicant testified that he will begin having \$190 deducted each month from his retirement account to pay off this debt. Exhibit C establishes that \$190.15 will be deducted monthly, beginning February 1, 2008, to pay off this debt.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$46,203.83, for past due child support.

Applicant testified that he had been current on his child support, but in 2004 he became unable to pay his child support for one year, because he was unemployed, His former wife brought the case to child services. Applicant testified that child support services made a three year miscalculation, and incorrectly assessed him as overdue in his child support payment the amount of \$54,000. Together with his former wife he went back to child services to explain their error and the case was audited again and according to Applicant, he is now current on his child support, and his requirement is that he pay \$1,000 a month. Exhibit B, a series of documents from Child Support Services Department dated October 2, 2007, shows that Applicant has paid a total of \$79,916 in child support with a total still owing of \$2,092.93. Applicant testified that, although he has only been ordered to pay \$1,000 a month, he actually paid \$2,000 a month from October 2004 until November 2007, so that he would pay his child support and eliminate his arrearage. I find that Applicant has been responsible with his child support requirements, and he is now current on his child support.

2.a. Applicant executed a signed Security Clearance Application (SCA) which is listed on the SOR as August 26, 2004, but that was actually December 8, 2004, (Exhibit 1). At the hearing, the SOR was amended to show the corrected date. Question #38 asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "No" to this question. The Government alleges that Applicant should have answered "Yes" to this question and included the debts listed as 1.b. through 1.d., in the SOR.

2.b. Question #39 of the SCA asks, "Are you currently over 90 days delinquent on any debt(s)?" Applicant answered, "No" to this question and again listed no debts. Again, the Government alleges that Applicant should have answered "Yes" to this question and included the debts listed as 1.b. through 1.d., in the SOR.

Applicant averred that through oversight he did not list the debts on the SOR. He testified credibly that he did not intend to mislead the Government in either of the questions he completed on his SCA.

Applicant cited several factors for his previous financial difficulties. When he left the Navy he was unemployed for a period from January 2003 to February 2004, while he was waiting for his current position to be ratified by the Government. He did pursue other employment opportunities during this period of time, but he was unsuccessful. His current wife also became disabled and stopped working in August 2004, as discussed above.

Applicant testified that his current finances are in good order and he does not have any other overdue debts. His wife is planning to go back to work in March 2004, and his retirement pay from his service in the Navy will also increase, because his former wife will receive a smaller percentage, as the child care arrearage has been resolved. Applicant's wife will also be receiving child support payments from her former husband. In total, Applicant's income and his retirement pay, together with his wife's pay, and his wife's child support will allow Applicant to be able to pay all his current and future bills in a timely manner.

Finally, Applicant offered into evidence five character letters from individuals who know or have known him in his professional or private life (Exhibit H). One is from a Brigadier General and another from a Captain in the United States Air Force. Two others were from Air Force personnel and a fifth letter is from a personal friend, who has known Applicant for more than 25 years. They all spoke in extremely laudatory terms of his high integrity, reliability, and dedication to his job.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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 common sense decision. According to AG ¶ 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 ¶ 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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 trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 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 [sensitive] 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 trustworthiness concerns. Under AG ¶ 19 (a), an Inability or unwillingness to satisfy debts is potentially disqualifying. Similarly under AG ¶ 19 (c), a history of not meeting financial obligations may raise security concerns. Applicant accumulated significant delinquent debt and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties.

AG ¶ 20 provides conditions that could mitigate security concerns:

Under AG ¶ 20 (b), it may be mitigating where the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances. As noted above, some of the financial problems arose from Applicant's loss of employment, the dissolution of his marriage, and the disability and loss of employment of his current spouse. Applicant acted responsibly in continuing to pay his child support as soon as he was able, even paying more than was required just to remove the arrearage. I find this potentially mitigating condition is a factor for consideration in this case.

AG ¶ 20 (d) is also applicable as the evidence is clear that Applicant has initiated a good-faith effort to repay his overdue creditors and otherwise resolve his debts.

Applicant is now more financially sound and better prepared for future contingencies. I conclude these potentially mitigating conditions apply.

GUIDELINE E, PERSONAL CONDUCT

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

While AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying, I find that none apply in this case. As discussed above, Applicant was

credible in his testimony that he did not knowingly furnish the Government with false or incomplete information regarding his finances on questions 38 and 39 of the SCA that he completed.

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. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 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) 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." Under AG ¶ 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.

I have considered the potentially disqualifying and mitigating conditions under Guidelines F and E, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including Applicant's reasons for his previous financial difficulties, his conscientious efforts to resolve his overdue debts, his excellent economic condition today, his long service in the United States Navy, and the positive letters of recommendation, I find that the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant mitigated the security concerns.

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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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.

Martin H. Mogul
Administrative Judge