



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



In the matter of:)	
)	
-----)	ISCR Case No. 06-21819
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

June 17, 2009

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted a Security Clearance Application (SCA), on September 26, 2005 (Item 4). On March 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) (Item 1) 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 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 submitted a reply to the SOR (RSOR) in writing signed on March 25, 2009 (Item 3), in which he requested that his case be decided on the written record in lieu of a hearing.

On April 24, 2009, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered 12 documentary exhibits (Items 1-12). Applicant

was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on May 30, 2009. Applicant submitted timely an additional two page document, which has been marked as Item 13, and entered into evidence without objection. The case was assigned to this Administrative Judge on June 11, 2009.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is a 31 year old employee of a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

The SOR lists 16 allegations (1.a. through 1.p.) regarding financial difficulties, specifically overdue debts, 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 is cited in the SOR in the amount of \$3,393. In Item 3, Applicant's RSOR, Applicant admitted this allegation, adding that "this debt will be included in a financial plan provided with the debt counselor and or paid off using the 401k cash withdrawal." No further evidence was submitted to establish that any payment has yet been made on this debt. At this time I find that the entire debt is still owing.

1.b. This overdue debt is cited in the SOR in the amount of \$1,120 for past taxes. In Item 3, Applicant admitted this allegation, adding that "this debt will be included in a financial plan provided with the debt counselor and or paid off using the 401k cash withdrawal." No further evidence was submitted to establish that any payment has yet been made on this debt. At this time the entire debt is still owing.

1.c. This overdue debt is cited in the SOR in the amount of \$803. In Item 3, Applicant admitted this allegation, adding that "this debt will be included in a financial plan provided with the debt counselor and or paid off using the 401k cash withdrawal." No further evidence was submitted to establish that any payment has yet been made on this debt. At this time the entire debt is still owing.

1.d. This overdue debt is cited in the SOR in the amount of \$2,243. In Item 3, Applicant admitted this allegation, adding that "this debt will be included in a financial plan provided with the debt counselor and or paid off using the 401k cash withdrawal." No further evidence was submitted to establish that any payment has yet been made on this debt. At this time the entire debt is still owing.

1.e. This overdue debt is cited in the SOR in the amount of \$130. In Item 3, Applicant denied that he is indebted to this creditor, and he indicated that he has requested an investigation of Equifax on March 24, 2009. I find that Applicant is disputing this bill at this time.

1.f. This overdue debt is cited in the SOR in the amount of \$787. In Item 3, Applicant admitted this allegation, adding that on March 25, 2009, he made a payment arrangement with this creditor to settle the debt for three monthly payments of \$131.17 each, starting on April 3, 2009. A letter from this creditor, dated March 25, 2009, confirming this agreement, was included with Item 3. No evidence has been submitted to establish that any payment has yet been made on this debt. At this time the entire debt is still owing.

1.g. This overdue debt is cited in the SOR in the amount of \$1,448. In Item 3, Applicant denied that he is indebted to this creditor in the amount stated. He explained that he has maintained bi-weekly payments of \$57.45, and has reduced the debt to \$1,079, and he indicated that this payment plan will remain in effect until this debt has been paid off in seven to 10 months. He also stated that this creditor has agreed to settle the debt for the amount of \$648.35 in two payments, with the first payment due by March 31, 2009. A letter from this creditor, dated March 24, 2009, confirming this agreement, and showing the amount still outstanding is \$1,079.89 was included with Item 3. However, it is not clear from Item 3, whether Applicant plans to make the two payments or follow the seven to 10 payment plan. At this time I find that \$1,079.89 is still owing to this creditor.

1.h. This overdue debt is cited in the SOR in the amount of \$265. In Item 3, Applicant admitted this allegation, adding that on April 3, 2009, this debt would be paid in full. No evidence has been submitted to establish that any payment has yet been made on this debt. At this time the entire debt is still owing.

1.i. This overdue debt is cited in the SOR in the amount of \$1,205. In Item 3, Applicant admitted this allegation, adding that he made a payment of \$120.05 to this creditor on March 26, 2009, and that a payment arrangement has been made to resolve this debt by making payments of \$54.23 to pay off this debt in no more than 10 months. No evidence has been submitted to establish that any payment has yet been made on this debt. At this time the entire debt is still owing.

1.j. This overdue debt is cited in the SOR in the amount of \$3,748, for a state tax lien. In Item 3, Applicant admitted this allegation, adding that the actual balance on this debt is now \$4,038.32, and he has made an agreement of bi-weekly payments of \$60. A letter from this state tax board, dated March 24, 2009, confirming this agreement, and showing the amount still outstanding is \$4,038.32 was included with Item 3. No evidence has been submitted to establish that any payment has yet been made on this debt. At this time the entire debt is still owing.

1.k. This overdue debt is cited in the SOR in the amount of \$4,132. In Item 3, Applicant denied this allegation, stating that this is the same debt as that listed in 1.j.,

above. After reviewing the debts, I find that this is the same debt as that listed and discussed in 1.j., above, and it is only owing one time.

1.i. This overdue debt is cited in the SOR in the amount of \$4,210. In Item 3, Applicant admitted this allegation, adding that the actual balance on this debt is now \$2,428, and he has made an agreement of bi-weekly payments of \$50, commencing on April 3, 2009, until the debt is paid in full. No evidence has been submitted to establish that any payment has yet been made on this debt. At this time the debt in the amount of \$2,428 is still owing.

1.m. This overdue debt is cited in the SOR in the amount of \$80. In Item 3, Applicant denied this allegation, stating that this debt was paid online in the amount of \$90.37. No evidence has been submitted to establish that any payment was made on this debt. At this time, I cannot conclude that this debt has been resolved.

1.n. This overdue debt is cited in the SOR in the amount of \$9,715. In Item 3, Applicant denied this allegation, stating that the actual balance on this debt is now \$8,194.96, after his repossessed vehicle, was sold at auction for the amount of \$1,500. A letter from this creditor, dated December 6, 2008, confirming that \$8,194.96 is still outstanding, was included with Item 3. At this time, the stated debt of \$8,194.96 is still owing.

1.o. This overdue debt is cited in the SOR in the amount of \$2,428. In Item 3, Applicant denied this allegation, stating that this is the same debt as that listed in 1.i., above. After reviewing the debts, I find that this is the same debt as that listed and discussed in 1.i., above, and it is only owing one time.

1.p. This overdue debt is cited in the SOR in the amount of \$21,171.87, owing to the Internal Revenue Service (IRS). In Item 3, Applicant denied this allegation, stating that the actual balance on this debt for taxes owed for tax years 2004 and 2005 is \$7,325.88, and that he has \$75 withdrawn from his paycheck bi-weekly to pay off this debt. A letter from the IRS, dated March 18, 2009, confirming that \$7,325.88 is still outstanding, and he is to pay \$150 a month, was included with Item 3. At this time, the stated debt of \$7,325.88 is still owing.

In Item 3, Applicant cited the primary reasons for his significant overdue debts: they included loss of employment in February 2005, and his being charged with a misdemeanor in 2003 that required him to pay court costs, lawyer fees, and 12 months of counseling. Additionally, he also cited a separation in 2007 and the loss of a tenant for a home that he was renting out.

Appellant stated that he plans to sell a home that he owns, which will provide him with money to pay off some of these debts. He also plans to make an early withdrawal of funds he has in a 401k, which he avers now has a balance of approximately \$10,500.

Applicant did submit a letter from the Security Operations Officer (SOO) of his employer (Item 13). The SOO acknowledged Applicant's financial problems, but described him in laudatory terms as "honest, trustworthy, dependable, hard working and pays attention to detail."

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: Mitigating Condition (b) could be argued to be applicable, since some of Applicant’s financial difficulties occurred because of a loss of earning and his separation.

However, while I find that Applicant has now begun the process of resolving these overdue debts, as stated above very little evidence has been offered to establish that any debts have actually been resolved or even reduced. It is simply too soon to make a determination that he will follow through on his agreements to resolve these debts. Additionally, no evidence was introduced to convince me that Applicant’s is current on all of his more recent debts, nor can I conclude that Applicant will not have more financial problems in the future.

I find that Applicant has not yet mitigated the financial concerns, and no Mitigating Condition applies. It is too soon to determine that he is more financially sound and better prepared for future contingencies.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on the reasons cited above as to why no Mitigating Condition applies, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole person concept. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.p.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge