



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



In the matter of:)	
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)	ISCR Case No. 12-09947
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

March 04, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On August 15, 2012, in accordance with Department of Defense (DoD) Directive 5220.6, the DoD issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD after September 1, 2006.

On September 19, 2012, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. (Item 4.) On November 8, 2012, 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 nine documentary exhibits. (Items 1-9.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on January 12, 2013. Applicant submitted a response, which has been identified and entered into evidence without objection as Item A. The case was assigned to this Administrative Judge on January 11,

2013. Based upon a review of the 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 additional document, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 35 years old. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 14 allegations (1.a. through 1.n.) regarding financial difficulties, specifically overdue debts totaling more than \$94,000, under Adjudicative Guideline F. The debts will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$170. Applicant denied this SOR allegation in his RSOR. (Item 4.) In his post FORM reply, Applicant claimed that this debt was paid in full. (Item A.) However, the credit report dated August 14, 2012, (Item 8) shows that this debt is owing, and no independent evidence has been introduced to establish that this debt has been resolved or reduced. At this point, I find that this debt is still due and owing.

1.b. This overdue debt is cited in the SOR in the amount of \$280. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.c. This overdue debt is cited in the SOR in the amount of \$114. Applicant denied this SOR allegation in his RSOR. (Item 4.) In his post FORM reply, Applicant also claimed that this debt was paid in full. (Item A.) However, Applicant's Counter-Intelligence Screening Questionnaire (Item 7) and two credit reports (Items 8 and 9) show that this debt is owing, and no independent evidence has been introduced to establish that this debt has been resolved or reduced. At this point, I find that this debt is still due and owing.

1.d. This overdue debt is cited in the SOR in the amount of \$1,048. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.e. This overdue debt is cited in the SOR in the amount of \$25,118. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.f. This overdue debt is cited in the SOR in the amount of \$6,166. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.g. This overdue debt is cited in the SOR in the amount of \$10,032. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.h. This overdue debt is cited in the SOR in the amount of \$1,901. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.i. This overdue debt is cited in the SOR in the amount of \$44,125. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.j. This overdue debt is cited in the SOR in the amount of \$653. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.k. This overdue debt is cited in the SOR in the amount of \$474. Applicant denied this SOR allegation in his RSOR. (Item 4.) Applicant also claimed that this debt was paid in full. (Item A.) However, Applicant's Counter-Intelligence Screening Questionnaire (Item 7) and a credit report dated November 8, 2011, (Item 9) show that this debt is owing, and no independent evidence has been introduced to establish that this debt has been resolved or reduced. At this point, I find that this debt is still due and owing.

1.l. This overdue debt is cited in the SOR in the amount of \$250. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.m. This overdue debt is cited in the SOR in the amount of \$396. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.n. This overdue debt is cited in the SOR in the amount of \$3,500. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

Applicant and his wife of eight years were divorced in 2009. Applicant also had periods of being underemployed and unemployed. (Items 5 and 7.) While it is indicated in the FORM that Applicant has been employed as a mechanic since January 2011, it appears that Applicant has actually been employed in his current employment as an interpreter from November 2011 to the present. (Item 5.)

In his RSOR, Applicant contends that he has hired a law firm to help him resolve his overdue debts and improve his credit standing. However, as reviewed above, no independent evidence has been introduced to establish that any of his overdue debts has been resolved or reduced, nor has any evidence been introduced to establish that Applicant has secured the services of a law firm to help him improve his financial situation.

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 ¶ 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 security 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 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 and could potentially apply in this case. 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. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. 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.” Applicant’s unemployment and underemployment, in addition to his divorce, could potentially make this mitigation condition applicable. However, since there is no independent evidence that Applicant has made any attempt to resolve his overdue debts, I do not find that Applicant has acted responsibly. Therefore, this mitigating condition is not applicable in this case.

Additionally, I do not find that AG ¶ 20(d) is applicable, since Applicant has not “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Finally, I do not find that any other mitigating condition applies to this case. Therefore, I find Guideline F against Applicant.

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) 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.

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 lack of independent evidence to establish that Applicant has made any attempt to resolve the past-due debts listed on the SOR, 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 under the whole-person concept.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.n.:	Against Applicant

Conclusion

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

Martin H. Mogul
Administrative Judge