



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-10810

Appearances

For Government: Adrienne Strzelczyk, Esquire, Department Counsel

For Applicant: *Pro se*

April 27, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On July 2, 2015, the Department of Defense (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; 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.

On July 31, 2015, 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 1.) On August 19, 2015, Department Counsel issued the Department's written case. On September 24, 2015, a complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered six documentary exhibits. (Items 1-6.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on October 24, 2015. Applicant submitted a two page letter, identified and entered into evidence without objection as Item A. The case was assigned to this Administrative Judge on November

10, 2015. 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, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 50 years old. He is married and has three adult children. Applicant served in the United States Air Force from 1987 to 2008. He has been employed by his present employer, 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 10 allegations (1.a. through 1.j.) regarding financial difficulties, specifically a bankruptcy and overdue debts totaling approximately \$550,000, under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. It is alleged in the SOR that Applicant filed a Chapter 13 Bankruptcy in July 2009; the bankruptcy was dismissed in 2010. Applicant admitted this SOR allegation in his RSOR. Applicant wrote that he and his wife tried to protect their home, but the bankruptcy was mishandled. (Item 1.)

1.b. This overdue debt is cited in the SOR for a mortgage account that went to foreclosure with a deficiency amount of \$528,000. Applicant denied this SOR allegation in his RSOR. He wrote that the property was sold with a \$0 balance. (Item 1.) In his Post-FORM submission, Applicant wrote that this house was sold and there is a \$0 balance. (Item A.) In reviewing both credit reports submitted by the Government, it appears that there is not an outstanding debt on this account. (Items 4 and 5.)

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$8,535. Applicant denied this SOR allegation in his RSOR. He wrote that the account was closed. (Item 1.) In Item A he wrote the account was closed and removed from the credit report. Item 4 establishes that this debt has not been resolved or reduced.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$3,027. Applicant denied this SOR allegation in his RSOR. He wrote that the account was closed. (Item 1.) In Item A he wrote the account was closed and removed from the credit report. Item 4 establishes that this debt has not been resolved or reduced.

1.e. This overdue debt is cited in the SOR for a collection account in the amount of \$6,672. Applicant denied this SOR allegation in his RSOR. He wrote that the account was closed. (Item 1.) In Item A he wrote the account was closed and removed from the

credit report. Item 4 establishes that this debt has not been resolved or reduced, but the correct amount owed by Applicant is \$2,672.

1.f. This overdue debt is cited in the SOR for a collection account in the amount of \$1,263. Applicant admitted this SOR allegation in his RSOR. He wrote that the account was closed, and he was in the process of contacting the creditor. (Item 1.) In Item A he wrote that he had contacted the creditor and planned to pay the balance in November 2015. No evidence has been introduced to show that this debt has been resolved or reduced.

1.g. This overdue debt is cited in the SOR for a charged-off account in the amount of \$1,050. Applicant admitted this SOR allegation in his RSOR. He wrote that the account was closed, and he was in the process of contacting the creditor. (Item 1.) In Item A he wrote that this account was closed and written off during his bankruptcy proceedings in 2009. Item 4 establishes that this debt has not been resolved or reduced.

1.h. This overdue debt is cited in the SOR for a charged-off account in the amount of \$15. Applicant denied this SOR allegation in his RSOR. He wrote that this debt for a car loan was paid in full, not charged off. He planned to contact the creditor to have this debt corrected from his credit report. (Item 1.) In Item A he wrote that this loan had been paid in full, and he had contacted the creditor and they will be correcting the report showing \$15 is still owed. While Item 4 establishes that this debt has not been resolved or reduced, Applicant appears to have a good-faith dispute as to this debt.

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$1,931. Applicant admitted this SOR allegation in his RSOR. He wrote that the account was sold to another creditor, and Applicant was attempting to determine whom to pay. (Item 1.) In Item A he wrote the account was closed and removed from the credit report. Item 5 establishes that this debt has not been resolved or reduced.

1.j. This overdue debt is cited in the SOR for a collection account in the amount of \$9. Applicant denied this SOR allegation in his RSOR. He wrote that he had no record of this debt. (Item 1.) In Item A he wrote that he had no record of doing business with this creditor and was planning to dispute the bill with the Experian credit reporting company. Item 5 establishes that this debt has not been resolved or reduced, but Applicant appears to have a good-faith dispute as to this debt.

Additionally, Applicant wrote in his RSOR that he and his wife were negatively affected by the 2009 mortgage crisis, and they attempted to save their home by filing for bankruptcy. However, he alleged that his bankruptcy attorney failed to properly represent them during the bankruptcy proceedings by not making any of the required appearances, so he was forced to request that the bankruptcy be dismissed. He claimed that "after over a year of this [the bankruptcy litigation] most of the debts were relieved. . . . Unfortunately we did not know who was paid and who even owned some of the debt as they were sold off." As noted above, Applicant contended that he has been attempting to contact the creditors and resolve some of his delinquent debts.

Again, no independent evidence was introduced to establish that any of these debts were resolved or reduced.

The Government has established Applicant's SOR debts 1.c., d., e., f., g., and i., through Applicant's RSOR, and the credit reports. (Items 4 and 5.) No evidence was introduced to establish that since the SOR was issued Applicant has contacted any of the creditors, made any payment plans, or resolved or reduced any of these overdue debts.

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 AG ¶ 2 describing 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 the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.

A person who applies for access to classified information seeks to enter 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 adverse 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, much of it several years old, which has not been satisfied.

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.” As reviewed above, Applicant explained his financial difficulties occurred, in part, because of the poor economy which ultimately contributed to Applicant’s house being foreclosed. However, despite Applicant initially attempting to resolve his delinquent debts through bankruptcy, no evidence was introduced to establish that Applicant has been responsible in taking any steps to resolve, or even reduce, any of the other delinquent SOR debts, including SOR 1.c., d., e., f., g., and i. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

Since there is no evidence that Applicant has initiated a good-faith effort to repay overdue creditors, I do not find that AG ¶ 20(d) is applicable. Finally, I do not find 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 all of the reasons cited above as to why the disqualifying conditions apply and no mitigating conditions are applicable, 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
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	For 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