



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 13-00476

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

October 25, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On June 5, 2013, 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 Department of Defense after September 1, 2006.

On July 1, 2013, 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 2.) On July 18, 2013, 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 10 documentary exhibits. (Items 1-10.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on September 13, 2013. Applicant did not submit a response. The case was assigned to this Administrative Judge on

September 17, 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, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 39 years old. He is married and has four biological children and one step-child. (Item 4.) 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 41 allegations (1.a. through 1.oo.) regarding financial difficulties, specifically judgements and overdue debts totaling approximately \$26,580, under Adjudicative Guideline F. In Applicant's RSOR, he admitted the allegations in subparagraphs 1.a. through 1.nn, and he denied the allegations in subparagraph 1.oo.

Pursuant to the Credit Reports, dated June 7, 2012; February 1, 2013; and May 1, 2013 (Items 8, 9, and 10); Applicant has 35 medical accounts and two non-medical accounts that have been placed in collection, and one charged off account. Many of these have been delinquent between two and seven years. Additionally, three unresolved judgements were entered against Applicant that are seven to 15 years old. (Items 6, 7, and 8.)

While Applicant denied SOR subparagraph 1.oo. in his RSOR, Item 6 establishes that this debt of \$2,059 is based on a judgement that was entered on May 5, 1998. No evidence was introduced to show that this judgement debt has been resolved. Nor has documentation been introduced to establish that any of the other SOR debts or judgements has been resolved. Applicant indicated that as of April 2013 he was not making any payments toward any of the debts, nor had he made any arrangements to make any payments. (Item 5.)

In an October 11, 2012 Subject Interview, Applicant indicated that he was unemployed from December 2010 through July 2011, after he was terminated from his job for failing to follow company policy. He also claimed that some of the debts arose during medical problems he and his son incurred when he had no medical insurance. Finally, Applicant claimed that some of his financial problems were incurred because of the death of his baby in 2012. (Item 5.)

During his interview, Applicant also stated that he planned to either contact the creditors and make payment plans to resolve his debts, or else file for bankruptcy. But as reviewed above, no evidence has been introduced to establish that these debts have been resolved, or reduced, or that a bankruptcy has been initiated. Finally, Applicant

indicated that he had sought no credit counseling or debt consolidation services to help him resolve his financial difficulties. (Item 5.)

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 in 2010 and 2011, in addition to his medical problems and those of his son, and the death of a baby in 2012, could potentially make this mitigation condition applicable. However, since there is no 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(c) is applicable, since Applicant has not received any counseling for the problem, nor do I 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.

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