



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



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| In the matter of: |) | |
| |) | |
| ----- |) | ISCR Case No. 13-00891 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Catie E. Young, Esquire

April 10, 2014

Decision

MOGUL, Martin H., Administrative Judge:

On September 24, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) 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 adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On November 13, 2013, Applicant, through counsel, replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on January 16, 2014. DOHA issued a notice of hearing on January 28, 2014, and the hearing was scheduled to be heard on February 27, 2014. The notice was amended and the hearing was held on February 28, 2014. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through S, which were also admitted without objection. At the hearing, the record was kept open until March 14, 2014 to allow Applicant to submit additional evidence. An additional request was

made by Applicant's counsel to keep the record open to allow additional documents, and the record was kept open until March 28, 2013. The documents that were timely received have been identified and entered into evidence without objection. They were incorrectly identified by Applicant's Counsel as Exhibits S and T, but they have been correctly identified and entered into evidence as Exhibits T and U. DOHA received the transcript of the hearing (Tr) on March 11, 2014. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Findings of Fact

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

Applicant is 42 years old. He is currently unmarried, but he was married from 1996 to 2008, and he has three children. Applicant received a Juris Doctor degree in 1997, and he is an attorney. He has been employed by a defense contractor for 14 years, and he is currently Vice President, General Counsel and Secretary. Applicant is seeking a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists six allegations (1.a. through 1.f.) regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. All of the SOR 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 for a medical past due account in the amount of \$253. Applicant admitted this SOR allegation in his RSOR, but wrote that the debt had been paid. At the hearing, Applicant testified that he resolved this debt. (Tr at 32-33.) Exhibit A establishes that Applicant made a payment of \$335.49 on October 14, 2013, to this creditor. I find that this debt has been paid in full.

1.b. the next four debts are cited in the SOR as being owed to the same creditor, KB. This overdue debt is cited in the SOR for a charged off account to KB in the amount of \$7,522. Applicant admitted this SOR allegation in his RSOR. At the hearing, Applicant averred that these debts to KB were for student loans incurred by him and his ex-wife, sometime in the early 1990s, and they had not been paid off. When he went through his divorce he believed that these debts were resolved.

Applicant explained that as he went through the security clearance process, he learned that debts to KB were not considered resolved. He attempted to contact the creditor, but there were different creditors listed on the credit reports that he reviewed for the same debt. He wrote letters to the creditors and made telephone calls. He also engaged the services of a law firm to try to help him resolve these debts, but he averred that he could never get a definitive response as to which entity the debts were owed.

Applicant credibly testified that he has the funds to pay off the debts to KB, and he is willing to do so, but he wants some kind of confirmation as to whom he should pay. (Tr at 33-40.) Applicant also testified that he only had two overdue debts, totaling approximately \$13,000, rather than the four debts listed on the SOR. (Tr at 41-61.) Exhibit C includes a copy of a letter sent by Applicant on October 14, 2014¹ to several different potential creditors for these same debts, in which Applicant indicates a willingness to pay the two debts in full in the amount of \$13,425, if he can receive a confirmation that this will resolve his debts.

Exhibit U consists of a letter, dated March 25, 2014, from Applicant to the creditor identified as KB with a check Applicant sent in the amount of \$13,425, as full payment for the two debts identified by Applicant. In his letter Applicant maintains that this payment is for all of the four debts listed, which have been listed on some credit reports and on the SOR. While the record is somewhat confusing, it appears that of the four loans listed on the credit reports, two of each had the same origination date, and one of the Credit Reports only show two debts. (Exhibit 4.) I find that there were only two debts, each of which were listed twice, and Applicant has paid off those two debts. I find that this debt has been resolved.

1.c. This overdue debt is cited in the SOR for a charged off account to KB in the amount of \$5,903. Applicant admitted this SOR allegation in his RSOR. Based on Exhibit U, reviewed above, I find that this debt has been resolved.

1.d. This overdue debt is cited in the SOR for a charged off account to KB in the amount of \$9,502. Applicant denied this SOR allegation in his RSOR, indicating that this was a duplicate of the loan referred to as 1.c., above. As reviewed above, based on Applicant's testimony, and this debt having the same origination date as 1.c., above, plus Exhibit 4 showing only two debts to this creditor, I find that this debt is the same as 1.c., which has been resolved.

1.e. This overdue debt is cited in the SOR for a charged off account to KB in the amount of \$10,500. Applicant denied this SOR allegation in his RSOR, indicating that this was a duplicate of the loan referred to as 1.b., above. Based on Applicant's testimony, and this debt having the same origination date as 1.b., above, plus Exhibit 4 showing only two debts to this creditor, I find that this debt is the same as 1.b., which has been resolved.

1.f. This overdue debt is cited in the SOR for a collection account in the amount of \$40. Applicant admitted this SOR allegation in his RSOR, but wrote that the debt had been paid. Applicant testified that he was not aware of some of his debts for his children's medical care because it came only to his ex-wife's home, and she did not forward it to him. He averred that he has paid this debt. (Tr at 74-76.) Exhibit F shows Applicant made a payment of \$50.28 on October 14, 2013, to pay this debt. I find that this debt has been resolved.

¹ Applicant mistakenly dated his letter October 14, 2014, rather than 2013.

Applicant testified that his financial difficulties began when he and his then wife separated and eventually divorced. Before their separation, he averred that they had excellent credit. He stated that once his wife knew they were going to separate, she emptied all of their accounts of more than \$100,000, and left him with \$1,000. And even though she took almost all of their money, he had to pay for spousal and child support. It was at this point, at the advice of his counsel, that he stopped making payments on his student loans. Because of the conflicts with his wife, the judge froze all of their accounts and assets. Ultimately they settled and their lawyers tried to help them resolve their debts. (Tr at 65-70, 95-96.)

Applicant testified that he currently has no credit cards and is not incurring any additional overdue debts. He averred that he did not buy a car until he could pay cash for it, and he will not buy a new home until he has saved up the money to pay for it. (Tr at 70.) Applicant's personal financial statement shows his monthly expenses are \$15,695, with an income of \$66,222, and Applicant testified that he is able to cover all of his expenses. (Exhibit P.) (Tr at 76-77.) Applicant testified that he pays \$8,500 each month for spousal and child support, and he is current on his payments. He also owns his car so there is no car payment due. (Tr at 80-81.) Applicant submitted a letter from his ex-wife in which she writes that Applicant "has historically made all child and spousal support payments when due and is current on all payments to me." (Exhibit T.) Finally, Applicant testified that he has contractual rights to an estimated \$4 million of stock. (Tr at 86-91.) (Exhibit P.)

Applicant submitted three very positive character letters. (Exhibits I, J, and K.) Applicant was described by an attorney, who works with and is supervised by Applicant, as someone who's "maturity, strength of character, and uncompromising integrity make him one of the most respected and trusted attorneys - and people - I know." Another attorney wrote, "I believe [Applicant] to have a high level of ethics and integrity with respect to his job responsibilities, including the handling of sensitive and confidential information."

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.” As reviewed above, Applicant’s separation and divorce were the cause of his financial difficulties and potentially make this condition applicable in this case. I find that Applicant did act reasonably to try to resolve the overdue debts, by paying two of the debts and contacting all of the potential creditors for the other debts in an attempt to resolve them. As the evidence has shown, Applicant has ultimately resolved those overdue debts as well, by making a payment to the original creditor of the total amount due. Accordingly, I find that Applicant has acted responsibly. Therefore, this mitigating condition is applicable in this case.

Additionally, I find that ¶ 20(d) is applicable, since Applicant has “initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts,” and he has resolved all of his overdue debts. Additionally, Applicant’s current financial situation is stable, with all of his financial obligations being met in a timely and responsible manner. Therefore, I find Guideline F for 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 access to a classified position 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 evidence establishing that Applicant has resolved all of the past-due debts listed on the SOR, I find that the record evidence leaves me with no significant 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 has 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:

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| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a.-1.f. | 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