



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



In the matter of:)
)
-----) ISCR Case No. 07-01506
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

May 15, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on August 22, 2005. On October 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and J 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 responded to the SOR (RSOR) in writing on November 26, 2007, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on January 29, 2008. DOHA issued a Notice of Hearing on February 13, 2008, and the hearing was initially set for March 7, 2008. Because of a conflict between Applicant and his counsel, Applicant did not appear at the hearing on that date. A second Notice of Hearing was issued on April 9, 2008, and the hearing finally convened as scheduled on April 21, 2008, in San Diego, California. The

Government offered Exhibits 1 through 14, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through C, without objection. I granted Applicant's request to keep the record open until April 28, 2008, to submit additional matters. He timely submitted Exhibit D, which has been received and entered without objection. DOHA received the transcript of the hearing (Tr) on April 30, 2008, and the record closed on that date.

Based upon a review of the case file, pleadings, exhibits, and testimony, 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 Answer to the SOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 54 years old. He is not married, and he has no children. He received a Master's Degree in Physics in 1989.

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

Paragraph 1 Guideline F, Financial Considerations

The SOR lists 8 allegations regarding financial difficulties, 1.a. through 1.h., under Adjudicative Guideline F. All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. In 1997, Applicant petitioned the United States Bankruptcy Court for a Chapter 7 bankruptcy. In 1998 all of his debts were discharged in bankruptcy. His debts totaled \$45,877.52 (Exhibit 4).

Applicant testified that for approximately one year before he filed for bankruptcy he had been unemployed because he had been laid off from his last place of employment. He had also undergone back surgery the year before that, and his medical bills totaled approximately \$4,700 more than what his insurance would cover.

1.b. In 1998, Applicant wrote four checks with insufficient funds to cover the checks. Applicant was prosecuted, plead Nolo Contendere, paid restitution, and adjudication was withheld.

Applicant testified that he wrote these four checks over a period of time, and that he was working at the time he wrote them. While he testified that he thought he would be able to cover these checks, he gave no explanation for why he continued over the course of several months to write checks that could had insufficient funds to be used,

and why he never resolved the payment of these four checks, until he was ordered by the court to do so.

1.c. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$1,245. For a judgement entered against him in 1998. At the hearing, Applicant testified that he has not paid this bill, because the court did not accept a partial payment, but rather wanted only a full payment. While Applicant claims he plans to eventually save sufficient funds to make one payment to resolve this bill, he has yet to do so even, though the bill was incurred approximately 10 years ago.

1.d. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$783. Applicant testified that he has been paying on this bill, which had increased to \$1,283, because of interest charges, and he now owes approximately \$200 on this debt. The record was left open to allow Applicant to submit documentation establishing that this debt has been reduced to \$200. In the post hearing documents, dated December 17, 2007, and submitted by Applicant in Exhibit D, it shows that \$30 was distributed to this creditor by a consumer credit counseling service, used by Applicant. Since only one statement was submitted, I can not conclude that consistent monthly payments are being made and this debt is in the process of being resolved.

1.e. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$12,371. Applicant testified that this debt is for an auto loan upon which he defaulted, when he became unemployed. He claims that he has been making payment on this debt and that the outstanding debt now totals approximately \$11,000. The record was left open to allow Applicant to submit documentation establishing that this debt has been reduced to \$11,000. In Exhibit D, it shows that \$248 was distributed to this creditor by a consumer credit counseling service, used by Applicant. Since only one statement was submitted, I can not conclude that consistent monthly payments are being made and this debt is in the process of being resolved.

1.f. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$402. Applicant was not certain if anything had been paid on this debt. In Exhibit D, it shows that \$15 was distributed to this creditor by a consumer credit counseling service, used by Applicant. Since only one statement was submitted, I can not conclude that consistent monthly payments are being made and this debt is in the process of being resolved.

1.g. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$926. The creditor of this debt is listed as the same as 1.f., above. In Exhibit D, it shows that \$19 was distributed to this creditor by a consumer credit counseling service used by Applicant. Since only one statement was submitted, I can not conclude that consistent monthly payments are being made and this debt is in the process of being resolved.

1.h. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$376. In Exhibit D, it shows that \$15 was distributed to this creditor by a consumer credit counseling service, used by Applicant. Since only one statement was submitted, I can

not conclude that consistent monthly payments are being made and this debt is in the process of being resolved.

Paragraph 2 (Guideline J - Criminal Conduct)

The SOR lists 7 allegations, 2.a. through 2.g., regarding criminal conduct under Adjudicative Guideline J. All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. In 1993, Applicant was charged with No license on Person, and he was fined. At the hearing, Applicant denied this allegation, as he had no recollection of ever being charged with not having a license in the city that is alleged in the SOR.

1.b. In February 1999, Applicant was arrested and charged with Driving Under the Influence (DUI). Applicant plead No Contest, and he was sentenced to one year probation, six months suspended driver's license, fined \$850, and ordered to participate in community service and DUI school. Applicant testified that this allegation is correct, and that he did meet all of his obligations for this sentence.

1.c. In June 1999, Applicant was arrested and charged with Driving While License Suspended or Revoked. Applicant plead No Contest, and he was sentenced to serve ten days in jail, pay a fine and one year probation. Applicant testified that at the time he was stopped, he was entitled to have his license reinstated, but he had not yet gotten around to it. He knew that he was required to have his license reinstated before he was legally entitled to drive, but he simply chose to drive without a reinstated license.

1.d. In February 2000, Applicant was arrested and charged with DUI. In April 2000, Applicant was further charged with Failure to Appear. He was sentenced to serve 60 days in jail, one year probation, and his license was suspended for five years. Applicant testified that he was aware of his requirement to appear in court, but since he had traveled out of state, he called the court to ask to have the appearance continued. However, he could not reach the court, and he simply did not appear when scheduled.

1.e. In August 2003, Applicant was charged with (1) Operating a Motor Vehicle with an Expired Vehicle License, and (2) Operating a Motor Vehicle without Insurance. He was fined \$45 for Charge (1). Applicant testified that the vehicle that he was driving was owned by his father, but as the driver he was responsible. Ultimately this was corrected.

1.f. In July 2005, Applicant was charged with Theft. In August 2005, a warrant was issued for Applicant's arrest for failure to appear. Applicant entered a pretrial diversion program, in which Applicant was ordered to perform community service. Applicant testified that he and one of his brothers were driving when they saw some wire, which they believed to be abandoned. His brother put the wire in the back of their truck and they drove off. Ultimately it was reported to the police and the owner of the wire pressed charges. Applicant did not receive the initial notice to appear in court because he was not at the address he gave to the court. When he became aware of his

requirement, he appeared in court, and he was ordered to perform eight hours of community service for the Special Olympics. After his service the charges were dismissed.

1.g. It is also alleged in the SOR that Applicant's conduct that is the subject of paragraph 1.b., above is also criminal conduct under Guideline J. This involves the four checks written by Applicant with insufficient funds that were never paid by Applicant until the matter was resolved in court.

Applicant introduced a letter of recommendation from a Senior Scientist, who has known Applicant for a considerable period of time. He stated that he considers Applicant to be a "superior employee of high moral character" and he "unhesitatingly recommended him" on that basis. There is no indication that this individual is aware of Applicant's history of financial difficulties or his criminal conduct.

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 Government has established that Applicant has had a history of financial difficulties and overdue debts.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC (a) and DC (c) apply, because of Applicant’s long history of not meeting financial obligations and his inability or unwillingness to satisfy his debts.

I can not find that any Mitigating Condition (MC) applies as Applicant has failed to resolve the vast majority of long overdue debts. While he has contacted a credit counseling service, he produced only one document, dated January 2008, to show that payment has been made on these overdue debts. No additional documents were offered into evidence to establish that further payments had been made. Therefore, I can not conclude that Applicant has engaged in a systematic effort to resolve his overdue debts. I, therefore, hold Guideline F against Applicant.

Guideline J - Criminal Conduct

The Government has established by substantial evidence that Applicant engaged in criminal conduct, as he was arrested for, and convicted of criminal offenses including: writing four checks with insufficient funds in 1998, two incidences of DUI in 1999 and 2000, failing to appear for his DUI court appearance in 2000 with no legitimate reason, knowingly driving with a suspended license in 1999, and an arrest for theft for placing wire in his vehicle that he knew or should have known belonged to someone else in 2005.

In reviewing the Disqualifying Conditions (DC) under Guideline J, DC 31. (a), a single serious crime or multiple lesser offenses, applies in this case. Under Mitigation Conditions (MC), I can not find that MC 32. (d) applies to this Applicant, as there is no

evidence of successful rehabilitation because the last criminal conduct occurred in 2005, only three years ago, and there is a significant pattern of criminal conduct. Applicant has not mitigated this allegation. Paragraph 2 is found 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) 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 have considered the potentially disqualifying and mitigating conditions under Guidelines F and G, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including Applicant's history of financial difficulties, his failure to resolve the overdue debts, and his history of criminal conduct, 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against 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.:	Against Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e.:	Against Applicant
Subparagraph 2.f.:	Against Applicant
Subparagraph 2.g.:	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