



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



In the matter of:)
)
 _____¹) ISCR Case No. 07-03298
 SSN: _____)
)
 Applicant for Security Clearance)

Appearances

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

April 7, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on March 13, 2006. On November 9, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 January 4, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on January 31, 2008. DOHA issued a notice of hearing on February 7, 2008, and the hearing was convened as scheduled on March 6, 2008, in

¹ At the beginning of the hearing, the SOR was amended to reflect Applicant's complete, correct name, which was incorrect on the SOR. The correct name is now on the SOR and on this decision.

San Diego, California. The Government offered Exhibits (Ex) 1 through 6, which were received without objection. Applicant testified on his own behalf and his wife also testified on his behalf. He submitted Exhibits A through K, which were admitted without objection. DOHA received the transcript of the hearing (Tr) on March 14, 2008.

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his RSOR Applicant admitted all of the SOR with some explanations, primarily with allegation 2.a. The admitted allegations are incorporated herein as 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 additional findings of fact:

Applicant is 30 years old. He is married, and he and his wife have two children.

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 13 allegations of overdue debts, 1.a. through 1.m., under Adjudicative Guideline F. As discussed above, in his RSOR, Applicant admitted that all of these debts remain overdue and unpaid. During his testimony, Applicant also admitted that all of the debts were still due and owing with the exception of 1.e. All of the debts will be reviewed in the same order as they were listed in the SOR:

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$307, and it remains unpaid.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$50, and it remains unpaid.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$867, and it remains unpaid.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$41, and it remains unpaid.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$3,560. Applicant testified that this debt has been rolled into a credit card and he is making regular payments on this card. I find that while this debt is still owed, Applicant is now consistently making payments on it and it is not an overdue debt.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$260, and it remains unpaid.

1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$2,360, and it remains unpaid.

1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$4,505, and it remains unpaid.

1.i. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$867, and it remains unpaid.

1.j. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$1,395, and it remains unpaid.

1.k. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$294, and it remains unpaid.

1.l. This overdue debt to Creditor 12 is cited in the SOR in the amount of \$103, and it remains unpaid

1.m. This overdue debt to Creditor 13 is cited in the SOR in the amount of \$975, and it remains unpaid.

While Applicant's financial difficulties result in part because his income is limited, Applicant has never consulted with any debt relief consulting company to try to help him resolve his debts, nor has he made payments on any of these overdue debts listed in the SOR, even though some of these debts are for extremely small amounts, including \$50 for 1.b., \$41 for 1.d., and \$103 for 1.l.

Paragraph 2 Guideline E, Personal Conduct

2.a. Applicant executed a signed SCA on March 13, 2006 (Exhibit 1). Question 28.a. asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "No" to this question, and he listed no debts. The Government alleges that Applicant should have included the debts listed in the SOR as 1.a. through 1.m.

Applicant credibly testified that he was not trying to mislead the Government, and that he had misunderstood the question. He believed that the question was asking for debts that had arisen over the last seven years preceding the date he completed the SCA, and since his debts were older than seven years, he did not believe he had to include these debts in his answer.

In Applicant's response to the previous question, he did identify that he had undergone a garnishment and a repossession, both putting the Government on notice

that he had experienced financial problems in the past. If he was trying to mislead the Government, it is less likely that he would have included this information in his SCA.

Applicant explained that his previous financial difficulties were incurred when he and his wife had their first child, and he was not ready to assume all of the financial responsibilities required. He has also had significant medical bill because his wife suffers from Multiple Sclerosis, which also limits her ability for employment.

Applicant's wife testified about her illness and also she verified that her husband was the primary breadwinner, not only for their immediate family, but also for his parents, who share a residence with them.

Finally, Applicant offered into evidence three letters from individuals who know Applicant in his professional life (Ex A). They spoke in extremely laudatory terms of him as an "ethical, competent and dependable person."

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 inability or unwillingness to satisfy his debts, and his long history of not meeting financial obligations.

I can not find that any Mitigating Condition (MC) applies as Applicant has failed to resolve any of his overdue debts, even those for which the amount is not significant. While his wife’s illness which lead to some of his financial problems was largely beyond his control, by his failing to make any attempt to consult with a credit counseling service or to pay off even the smallest of debts, I can not find that he has acted in a responsible manner. I, therefore, hold Guideline F against Applicant.

Guideline E, Personal Conduct

With respect to Guideline E, the evidence establishes that Applicant provided incorrect material information to the Government on the SCA that he executed on March 13, 2006. Applicant identified no debts that were over 180 days overdue in the last seven years prior to his completing the SCA, when clearly he should have identified all of the debts listed on the SOR. However, Applicant testified credibly that he misunderstood the question. By Applicant answering “Yes” to the previous question and listing a garnishment and a repossession, he did put the Government on notice that he had some financial difficulties. I find that Applicant did not intend to mislead the Government.

In reviewing the DCs under Guideline E, I conclude that no DC applies against Applicant. I therefore, resolve Guideline E 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) 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 E, 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, even the small ones, and his failure to make any attempt to receive financial counseling, 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
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a:

For 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