



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



In the matter of:)
)
-----) ISCR Case No. 07-07811
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: James W. Green, Esquire

April 17, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on July 27, 2005. On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) 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 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 replied to the SOR (RSOR) in writing on November 28, 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 convened as scheduled on March 6, 2008, in San Diego, California.

The Government offered Exhibits (Ex) 1 through 8, which were received without objection. Applicant testified on his own behalf and two additional witnesses testified on behalf of Applicant. Applicant also submitted Exhibits A through SS. All of the exhibits were admitted without objection, with the exception of Exhibits A and B, which were not admitted. 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 granted.

Findings of Fact

In his RSOR, Applicant denied every SOR allegation, although clearly Applicant's responses did not actually address the allegations.

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 the two witnesses, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 42 years old. He is currently married to his third wife, and he has five children. He received a Masters Degree in Computer Science in 1997. Applicant served in the United States Army for 20 years

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

The SOR lists 16 allegations regarding financial difficulties under Adjudicative Guideline F. All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$2,475. Applicant testified that he has referred a number of debts to a law firm that acts as a credit counseling service, and that he is planning to start using the firm to pay off his debts. The company is listed in an enrollment summary page (Ex Y) as "a national law firm dedicated to consumer debt resolution," (law firm) and it confirms that Applicant will pay \$445.50 a month, through the debiting of his checking account, beginning on April 4, 2008, and continuing for two years and six months, to pay off many of his outstanding debts. While no payment has yet been made on this debt, Applicant has now put in place a plan to resolve this debt.

1.b. This overdue debt is cited in the SOR in the amount of \$3,191. Applicant testified that he had made a payment of settlement on this debt. Ex MM is a copy of a settlement letter on this debt, and Ex LL is a receipt showing that this debt has been paid.

1.c. This overdue debt is cited in the SOR in the amount of \$513. Applicant testified that he had made a payment of settlement on this debt. Ex II is a copy of Applicant's bank statement showing this debt was paid.

1.d. This overdue debt is cited in the SOR in the amount of \$1,507. Applicant testified that he has included this debt among those to be resolved through the law firm. No payment has yet been made on this debt, but Applicant has now put in place a plan to resolve this debt.

1.e. This overdue debt is cited in the SOR in the amount of \$4,509. Applicant testified that he had made one payment of settlement on this debt in the amount of \$515, and he has five more payments of \$515 to make before the debt is resolved. Ex PP is a copy of a settlement letter offer from the creditor on this debt. Ex QQ confirms that one payment has been made thus far on this debt.

1.f. This overdue debt is cited in the SOR in the amount of \$6,239. This debt is to the same creditor as 1. e., above. Applicant is making payments of \$100 a month to resolve this debt.

1.g. This overdue debt is cited in the SOR in the amount of \$3,701. This debt is also to the same creditor as 1. e. and 1.f., above. Applicant did not believe that he had more than two debts to this creditor, a credit card company, and so he has written a letter to the creditor, trying to get a further explanation (Ex Z). He testified that if it shows that he owes this debt, he will add this debt to those being resolved by the law firm.

1.h. This overdue debt is cited in the SOR in the amount of \$3,158. This is the fourth debt to the same creditor as 1. e. through 1.g., above. Applicant did not believe that he had more than two debts to this creditor, so he has written a letter to the creditor trying to get a further explanation (Ex AA). He testified that if it shows that he owes this debt, he will he will add this debt to those being resolved by the law firm.

1.i. This overdue debt is cited in the SOR in the amount of \$20,000. Applicant testified that he has included this debt among those to be resolved through the law firm. No payment has yet been made on this debt, but Applicant now has a plan to resolve this debt, that was for a vehicle that had been owned by him and his ex-wife, and that was voluntarily repossessed by the seller.

1.j. This overdue debt is cited in the SOR in the amount of \$2,636. Applicant testified that this is a duplication of 1.a., above, which he is in the process of being resolved.

1.k. This overdue debt is cited in the SOR in the amount of \$17,233. This debt is to the same creditor as 1. i., above, that Applicant has turned over to the law firm to resolve.

1.l. This overdue debt is cited in the SOR in the amount of \$1,262. Applicant testified that he has included this debt among those to be resolved through the law firm. No payment has yet been made on this debt, but Applicant now has a plan to resolve this debt.

1.m. This overdue debt is cited in the SOR in the amount of \$974. Applicant testified that this is a duplication of 1.d., above, which he is in the process of being resolved.

1.n. This overdue debt is cited in the SOR in the amount of \$1,433. Applicant testified that this is a duplication of 1.b., above, which has been paid.

1.o. This overdue debt is cited in the SOR in the amount of \$3,409. This is the fifth debt to the same creditor as 1. e. through 1.h., above. Applicant did not believe that he had more than two debts to this creditor, so he has written a letter to the creditor trying to get a further explanation (Ex BB). He testified that if it shows that he owes this debt, he will he will add this debt to those being resolved by the law firm.

1.p. Applicant petitioned the United States Bankruptcy Court on March 31, 1998 for a Chapter 7 Bankruptcy. Applicant's of Applicant's debts were discharged on July 7, 1998, with the exception of his car loan, which he continued to make payments on until he paid it off completely.

Applicant cited several reasons for his financial difficulties. He testified that when he was deployed overseas, unbeknownst to him, his first wife incurred a great deal of debt. Since he did not have the income to resolve these debts, he determined to file for bankruptcy to discharge these debts. His second wife also incurred debt, while he was deployed. His current overdue debts occurred, because he focused on paying for the medical care of his wife and mother, who have suffered from cancer and Alzheimer's disease, respectively. Applicant testified that despite medical insurance from the Army, his out of pocket expenses for his wife's care was \$68,432 and for his mother he paid \$11,000. These medical bills have all now been paid in full by Applicant, and he testified that had he not had these bills, he would have already resolved the debts listed on the SOR.

Applicant testified that he is now in control of his debts in a way that he was not when he served in the military. Since he will not be deployed as he was in the Army, he can keep track of his bills to make sure they are paid, and are not overdue. He also is expecting to be promoted and transferred to a less expensive part of the country, which will increase his net income. Finally, his wife, who is now in full remission from her cancer, is anticipating being employed and that will increase the family income, and help them to resolve these overdue bills, and live within their means in the future.

Applicant offered into evidence three letters from individuals who know in his professional and/or personal life (Exhibits A through C). They spoke in extremely laudatory terms, describing him as trustworthy, responsible and patriotic. He also submitted his five most current NCO Evaluation Reports for years 1998 through 2002 (Exhibits D through H). His ratings were generally Excellent and in the Values category he was described as "Totally committed to living Army Values," Honesty and Loyalty are above reproach," and Dedication to duty and to soldiers is unsurpassed."

Finally, Applicant offered into evidence a number of awards and medals that he has received including: three FEMA Certificates of Achievement (Exhibits J through L), four Certificates of Achievement (Exhibits N through Q), three USA, Meritorious Service Medals (R through T), The Army Commendation Medal (Exhibit U), and The Army Achievement Medal (Exhibit V).

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 trustworthiness 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 [sensitive] 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 trustworthiness concerns. 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. Applicant accumulated significant delinquent debt and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties.

AG ¶ 20 provides conditions that could mitigate security concerns:

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 noted above, the financial problems arose primarily from Applicant’s former wife’s spending while Applicant was deployed overseas, and his continuing to take care of his mother and current wife and their medical difficulties. Mitigating Condition (d) is also applicable since Applicant is now making a good faith effort to resolve and repay these overdue debts. These mitigating conditions are factors for consideration in this case.

I find that Applicant is now more financially sound and better prepared for future contingencies. I conclude that he has mitigated the financial concerns.

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 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 Mitigating Conditions (b) and (c) apply, together with Applicant's exemplary military career and dedication to the defense of our country, I find that the record evidence leaves me without 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 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:

FOR APPLICANT

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|-------------------|---------------|
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | For Applicant |
| Subparagraph 1.d: | For Applicant |
| Subparagraph 1.e: | For Applicant |
| Subparagraph 1.f: | For Applicant |
| Subparagraph 1.g: | For Applicant |
| Subparagraph 1.h: | For Applicant |
| Subparagraph 1.i: | For Applicant |
| Subparagraph 1.j: | For Applicant |
| Subparagraph 1.k: | For Applicant |
| Subparagraph 1.l: | For Applicant |
| Subparagraph 1.m: | For Applicant |
| Subparagraph 1.n: | For Applicant |
| Subparagraph 1.o: | For Applicant |
| Subparagraph 1.p: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge