

on his own behalf and one additional witness testified on his behalf. He offered into evidence Exhibits A through S, which were admitted without objection. I granted Applicant's request to keep the record open until November 13, 2008, to submit additional matters. He timely submitted a cover letter, and seven additional documents, which have been marked collectively as Exhibit T, and entered into evidence without objection. DOHA received the transcript of the hearing (Tr) on November 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 allegations, with the exception of 1.g., 1.m., 1.n., and 1.p., which he denied. 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 the additional witness, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 53 years old. He is not married and he does not have any children. 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 (1.a. through 1.p.) 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. In November 2004, Applicant petitioned for a Chapter 13 bankruptcy. His case was dismissed in 2005, prior to his debts being discharged. Applicant testified that it was his decision to dismiss the bankruptcy. On cross examination, when confronted with Exhibit 9, Applicant conceded that he had filed a Chapter 7 bankruptcy in 2000, in which he discharged his debts of \$42,467 at that time.

1.b. This overdue debt to Creditor 1 for a civil judgement is cited in the SOR in the amount of \$128,959. Applicant testified that through some error by his employer at the time he was receiving more of a salary than that to which he was entitled for a period of 1 ½ years, but that he was not aware of it since he was out for part of that time receiving disability. When the employer realized that Applicant had been overpaid, it sued him civilly in court and it was awarded a judgement in the amount of \$128,959. Applicant testified that he has made a settlement offer to the creditor, but at this point he has not resolved this debt.

1.c. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$1,643. On the day of the hearing, Applicant sent a letter to this creditor, attempting to begin the process of settling this debt (Exhibit G). At this time, this debt has not been resolved.

1.d. This overdue debt, also to Creditor 2 is cited in the SOR in the amount of \$2,805. Applicant sent a letter to the creditor for this debt as well, attempting to begin the process of settling this debt. At this time, this debt has not been resolved.

1.e. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$1,275. On the day of the hearing, Applicant sent a letter to this creditor, attempting to begin the process of settling this debt (Exhibit F). At this time, this debt has not been resolved.

1.f. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$1,042. On the day of the hearing, Applicant sent a letter to this creditor, attempting to begin the process of settling this debt (Exhibit E). At this time, this debt has not been resolved.

1.g. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$123. Applicant testified that he is disputing this debt, because he believes that it is resolved. He testified that if he finds it has not been paid, he will pay it. I can not conclude that this debt has been resolved.

1.h. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$378. Applicant testified that he is disputing this debt, because he believes that it is resolved, although in his RSOR he admitted this allegation. He testified that if he finds it has not been paid, he will pay it. I can not conclude that this debt has been resolved.

1.i. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$782. On the day of the hearing, Applicant sent a letter to this creditor, attempting to begin the process of settling this debt (Exhibit B). At this time, this debt has not been resolved.

1.J. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$12,488.31. This debt is for a tax lien filed against Applicant by the Internal Revenue Service (IRS) for taxes, interest and penalties for tax years 1999, 2002, and 2004. Applicant testified that he has been paying \$600 a month on this debt. He believed that he has paid this amount for two years, but he had no documentation to establish how much of this debt has been paid and how much is still owing. He also conceded that he has defaulted on payments to the IRS on at least two occasions.

1.k. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$5,466. On the day of the hearing, Applicant sent a letter to this creditor, attempting to begin the process of settling this debt (Exhibit A). At this time, this debt has not been resolved.

1.l. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$963. Applicant testified that he plans to send a letter to this creditor, attempting to begin the process of settling this debt, but he has not yet done so. At this time, this debt has not been resolved.

1.m. This overdue debt to Creditor 12 is cited in the SOR in the amount of \$330. Applicant testified that he is disputing this debt for medical services, because he believes that it is resolved. If he finds it has not been paid, he will pay it. I can not conclude that this debt has been resolved. At this time, this debt has not been resolved.

1.n. This overdue debt to Creditor 13 is cited in the SOR in the amount of \$84. Applicant testified that he has paid this debt. While he had no documentation to prove that the debt had been paid, Exhibit 7 establishes that this debt has been paid.

1.o. This overdue debt to Creditor 14 is cited in the SOR in the amount of \$331.46 Applicant was not clear as to the origination of this debt, but on the day of the hearing, Applicant sent a letter to this creditor, attempting to begin the process of settling this debt (Exhibit H). At this time, this debt has not been resolved.

1.p. This overdue debt to Creditor 15 is cited in the SOR in the amount of \$300. Exhibit T has a medical bill in the amount of \$300, from Creditor 15. At this time, this debt has not been resolved.

Applicant testified that he had much of this debt, but when he became unemployed for a period of at least nine months, he was unable to pay off the debt. However, as has been discussed above, he had debt that he discharged in bankruptcy in 2000, before he was unemployed.

He claims that once he gets responses to the letters he sent to the creditors he will begin establishing some kind of a payment plan to pay off these debts. Again, he only sent those letters to the creditors on the day of the hearing. Applicant has taken a number of online courses to help him better manage his finances. Exhibits I through Q are certificates of completion for the various courses taken by Applicant. Based on the dates of the certificates, all of these courses were taken within three days before the hearing.

Finally, Applicant testified that in he does not currently have any credit cards, and he has recently finished making payments for his truck.

The one witness, who testified on behalf of Applicant, has known him for two years as his supervisor in his current employment. He described Applicant as "completely honest" and "straightforward."

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 has been unable to pay all but one of his obligations for several years. 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:

As noted above, the financial problems arose at least in 2000 when Applicant first filed for Chapter 7 bankruptcy. While he discharged his debt in 2000, he has clearly accumulated significant overdue debt since that time, and he has not made a good faith effort to resolve his current overdue debts. I can not conclude that Applicant has acted responsibly under these circumstances because he only attempted to contact most of these creditors on the day of the hearing, and he has sought financial counseling a few days before the hearing that might help him to ascertain a way to resolve these overdue debts. Therefore, I find that no mitigating condition is a factor for consideration in this case.

Applicant has not resolved the great majority of his overdue debt. I conclude that until he is able to significantly reduce his overdue debt, he has not mitigated the financial concerns of the Government.

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 the Disqualifying Conditions apply and why no Mitigating Condition applies, 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

Subparagraphs 1.a through 1.p.: 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