



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-10729
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

June 4, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on January 1, 2006. On January 29, 2008, 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 February 18, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on March 27, 2008. DOHA issued a notice of hearing on April 8, 2008, and the hearing was convened as scheduled on April 29, 2008, in Woodland Hills, California.

The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through G. All of the exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr) on May 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 with explanations SOR allegations: 1.o., 1.y., 1.z., 1.aa., 1.ii., 1.ii., 1.mm., 1.nn., and he denied all of the other allegations. 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 following additional findings of fact:

Applicant is 51 years old. He is currently married to his second wife, although they are separated, and he has one adopted daughter. Applicant served in the United States military from 1970 to 1980.

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 42 allegations of overdue debts totaling \$63,775, 1.a. through 1.pp., 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 \$7,207. Applicant testified that he did not believe that this was his debt, and after he contacted the creditor for this debt he was told it would be removed from his credit report. It has now been removed.

1.b. This overdue debt is cited in the SOR in the amount of \$1,764. Applicant testified that this is a valid debt, which he did not recall. He plans to contact the creditor to resolve this debt, but no action has yet been taken from Applicant to resolve this debt.

1.c. This overdue debt is cited in the SOR in the amount of \$391. Applicant testified that this is one of the many debts incurred by his wife for medical treatment that she received after she was struck by an automobile while she was on her bicycle. This debt has not been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$557. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$22,387. Applicant testified that this bill is for a credit card that belonged to his wife's mother. While this

debt has not been eliminated it has been reduced to \$1,500. Applicant plans to contact the creditor to have it completely eliminated from his credit report.

1.f. This overdue debt is cited in the SOR in the amount of \$1,626. This is another credit card debt that has not been resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$213. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$208. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.i. This overdue debt is cited in the SOR in the amount of \$292. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.j. This overdue debt is cited in the SOR in the amount of \$163. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.k. This overdue debt is cited in the SOR in the amount of \$49. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.l. This overdue debt is cited in the SOR in the amount of \$262. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.m. This overdue debt is cited in the SOR in the amount of \$258. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.n. This overdue debt is cited in the SOR in the amount of \$272. Applicant testified that this a medical bill incurred by him as a result of a heart attack that he sustained. He thought it would be paid by the Department of Veterans Affairs, but for some reason, of which Applicant was unaware, it was not paid. This debt has not been resolved.

1.o. This overdue debt is cited in the SOR in the amount of \$2,793. Applicant testified that this is a medical bill incurred either by him or his wife, he was not sure. This debt has not been resolved.

1.p. This overdue debt is cited in the SOR in the amount of \$274. Applicant testified that this is a medical bill incurred either by him or his wife. This debt has not been resolved.

1.q. This overdue debt is cited in the SOR in the amount of \$130. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.r. This overdue debt is cited in the SOR in the amount of \$144. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.s. This overdue debt is cited in the SOR in the amount of \$424. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.t. This overdue debt is cited in the SOR in the amount of \$144. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.u. This overdue debt is cited in the SOR in the amount of \$424. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.v. This overdue debt is cited in the SOR in the amount of \$135. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.w. This overdue debt is cited in the SOR in the amount of \$195. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.x. This overdue debt is cited in the SOR in the amount of \$294. Applicant testified that this is a medical bill incurred either by him or his wife. This debt has not been resolved.

1.y. This overdue debt is cited in the SOR in the amount of \$3,193. Applicant testified that this is a medical bill incurred either by him or his wife. This debt has not been resolved.

1.z. This overdue debt is cited in the SOR in the amount of \$2,079. Applicant testified that this is a medical bill incurred either by him or his wife. This debt has not been resolved.

1.aa. This overdue debt is cited in the SOR in the amount of \$8,076. Applicant testified that this is a medical bill incurred either by him or his wife. This debt has not been resolved.

1.bb. This overdue debt is cited in the SOR in the amount of \$110. Applicant testified that this bill was incurred by his wife, when she wrote two checks with insufficient funds. This debt has not been resolved.

1.cc. This overdue debt is cited in the SOR in the amount of \$710. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.dd. This overdue debt is cited in the SOR in the amount of \$217. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.ee. This overdue debt is cited in the SOR in the amount of \$88. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.ff. This overdue debt is cited in the SOR in the amount of \$343. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.gg. This overdue debt is cited in the SOR in the amount of \$241. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.hh. This overdue debt is cited in the SOR in the amount of \$494. Applicant testified that this is a medical bill incurred either by him or his wife. This debt has not been resolved.

1.ii. This overdue debt is cited in the SOR in the amount of \$2,718. Applicant testified that this bill was incurred by him because of an overpayment by the state Employment Development Department. Applicant further testified that he has been making payments on this debt. Exhibit B confirms that this debt has been reduced to \$888, and he continues to make payments of \$50 every two weeks.

1.jj. This overdue debt is cited in the SOR in the amount of \$383. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.kk. This overdue debt is cited in the SOR in the amount of \$2,354. Applicant testified that this bill was incurred by his wife, but when he contacted the creditor, Applicant was informed that the bill would be removed from his credit report.

1.ll. This overdue debt is cited in the SOR in the amount of \$244. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.mm. This overdue debt is cited in the SOR in the amount of \$2805. Applicant testified that this bill was for a credit card lost by Applicant. This debt has not been resolved.

1.nn. This overdue debt is cited in the SOR in the amount of \$244. Applicant testified that this phone bill had been approximately \$400, and he has reduced it to the current amount listed on the SOR of \$244.

1.oo. This overdue debt is cited in the SOR in the amount of \$984. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

1.pp. This overdue debt is cited in the SOR in the amount of \$195. Applicant testified that this is a medical bill incurred by his wife. This debt has not been resolved.

Applicant explained that the primary reason for his outstanding debt is the many medical bills incurred by his wife from the vehicular accident in which she was involved. While Applicant has been separated from his wife since approximately 2000 or 2001, he is still legally married to her. He contended that he was not aware for many years that she was incurring all of these debts. He contacted some of the creditors to tell them he was separated from his wife, but he was informed that since he was still legally married to his wife, he was still responsible for debts that she has incurred.

When Applicant was asked why he did not file for divorce from his wife so he could stop being responsible for her continuing overdue debts, he testified that he has

been unable to afford to file for divorce, but he does plan to do so in the future. Because he remains legally married to his wife, he will be legally responsible for debts she accumulates in the future.

Applicant also was unemployed or underemployed for periods of time, partially due to health issues, which contributed to his indebtedness.

Finally, Applicant testified his income covers his phone, rent, truck and his insurance. He has very little left after paying these debts.

Applicant offered into evidence two letters from individuals who know him in his professional capacity (Exhibits D and E). They spoke in laudatory terms, describing him as a dedicated Security Officer, and someone who is honest and devoted to protecting classified information.

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 these debts. The evidence is sufficient to raise these 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 incurring significant

medical bills over the course of several years. However, I can not find that this Mitigating Condition applies since Applicant has not acted responsibly since he has made no effort to legally end his marriage with his wife, despite being separated from her for more than five years. As long as Applicant remains married to his wife, he will legally be responsible for all of the bills that she has incurred and will incur in the future. Also, while he has contacted some of these creditors, I can not find that Mitigating Condition (d) is applicable since Applicant has not yet begun to make a good faith effort to resolve and repay most of these overdue debts.

I find that Applicant is not yet financially sound and prepared for future contingencies. I conclude that he has not 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 (d) do not apply, considered with the tremendous amount of overdue debt and Applicant's failure to take action so that he would no longer be responsible for his wife's future indebtedness, I find that the record evidence leaves me with considerable 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 failed to mitigate 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
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraph 1.bb:	Against Applicant
Subparagraph 1.cc:	Against Applicant
Subparagraph 1.dd:	Against Applicant
Subparagraph 1.ee:	Against Applicant
Subparagraph 1.ff:	Against Applicant
Subparagraph 1.gg:	Against Applicant
Subparagraph 1.hh:	Against Applicant
Subparagraph 1.ii:	Against Applicant
Subparagraph 1.jj:	Against Applicant
Subparagraph 1.kk:	Against Applicant
Subparagraph 1.ll:	Against Applicant
Subparagraph 1.mm:	Against Applicant
Subparagraph 1.nn:	Against Applicant
Subparagraph 1.oo:	Against Applicant
Subparagraph 1.pp:	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