



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-11477
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

October 16, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on April 30, 2007. On April 17, 2008, 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 June 25, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on August 11, 2008. DOHA issued a notice of hearing on September 16, 2008, and the hearing was convened as scheduled on October 2, 2008. The Government offered Exhibits 1 through 11, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through C, which were admitted without objection. Upon Applicant's request the record remained open until

October 10, 2008, to allow Applicant to submit further documentation. Applicant did not supply any other documentation into evidence. DOHA received the transcript of the hearing (Tr) on October 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 SOR allegations 1.a., through 1.j., with some explanations. Regarding allegations 2.a., through 2.e., he admitted in part and denied in part. The admitted allegations, 1.a., through 1.j., 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 31 years old. He is married, and he and his wife have five 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 9 allegations of overdue debts, 1.a. through 1.i., and one allegation regarding bankruptcy, 1.j., 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. 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 \$1,365. Applicant testified that he plans to pay off this debt, but at this time, it remains unpaid.

1.b. This overdue debt also to Creditor 1 is cited in the SOR in the amount of \$600. Applicant testified that he plans to pay off this debt, but at this time, it remains unpaid.

1.c. This third overdue debt to Creditor 1 is cited in the SOR in the amount of \$1,200. Applicant testified that he plans to pay off this debt, but at this time, it remains unpaid.

1.d. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$847. Applicant testified that he plans to pay off this debt, but at this time, it remains unpaid.

1.e. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$396. Applicant testified that he has been in contact with this creditor and has agreed to a payment plan where he will pay the creditor half of his debt by October 10, 2008, and the second half by November 10, 2008. He is waiting for the paperwork confirming the agreement. At this time this debt remains unpaid.

1.f. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$30,597. This debt is as a result of Applicant's house being foreclosed. It is not clear whether this debt falls under the state's anti-deficiency statute, which limits a homeowner's liability to the value that the creditor can receive from the home after it has been repossessed. Since no evidence was submitted regarding this debt, it has not been established if this debt has been extinguished or if it is still due and owing.

1.g. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$10,092. Applicant testified that he plans to pay off this debt, but at this time, it remains unpaid.

1.h. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$807. Applicant testified that he does not know what was is the basis of this debt. He has not contacted the creditor to ascertain what the debt is for, and at this time, the debt remains unpaid.

1.i. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$1,223. Applicant testified that he plans to pay off this debt, but at this time, it remains unpaid.

1.j. On March 24, 2006, Applicant filed a voluntary petition for Chapter 13 bankruptcy. The bankruptcy was dismissed on April 3, 2007. While it is alleged in the SOR, that the bankruptcy was dismissed because Applicant failed to make payments in accordance with the bankruptcy plan, Applicant testified that he dismissed the bankruptcy because he did not believe that his attorney was properly representing him. As a result of the dismissed bankruptcy none of Applicant's debts was discharged or resolved.

Applicant gave two very different reasons for his for his financial difficulties. At the hearing, he testified that his problems occurred because his mother-in-law died, and he and his wife took into their home and supported his wife's two sisters and the daughter of one of her sisters. However, in a letter, written by Applicant on October 1, 2008, and submitted into evidence as Exhibit A, he stated, "We underestimated ourselves when we moved into a house from an apartment . . . We have also learned that it takes a budget between two people in order to prosper in life." Nowhere in this letter does he ever mention his wife's sisters, as even one of the reasons for his financial difficulties. And when he testified he failed to discuss his moving from an apartment to a home or his failure to have a budget as reasons for his problems.

Based on Applicant's two different explanations and his total lack of credibility, as will be reviewed under Guideline E, below, there is no way to know what the actual reason is for his financial difficulties.

Paragraph 2 Guideline E, Personal Conduct

2.a. Applicant executed a signed SCA on November 3, 2006 (Exhibit 3). 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.d., and 1.g., above. It appears that Applicant should have included all of the debts listed as 1.a. through 1.i., above.

2.b. Question 28.b. asks, "Are you currently over 90 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.d., 1.f, and 1.g., above. It appears that Applicant should have also included all of the debts listed as 1.a. through 1.i., above.

2.c. Question 27.a. asks, "In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13?" Applicant answered "No" to this question. The Government alleges that Applicant should have included the Chapter 13 bankruptcy, as reviewed in 1.j., above.

2.d. Question 23.d. asks, "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs." Applicant answered "No" to this question. The Government alleges that Applicant should have included his arrest and conviction for Possession of Marijuana on June 1, 1999, for which he was fined \$100 and required to attend a drug treatment program. At the hearing, Applicant admitted the 1999 marijuana conviction.

2.e. Question 24,a. asks, "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance . . ." Applicant answered "No" to this question. The Government alleges that Applicant should have included his marijuana usage during the period within seven years of his completion of the SCA. Applicant admitted that he used marijuana from 1992 to at least October 2000. At the hearing, Applicant admitted he had used marijuana in the years stated.

Applicant testified that he was not trying to mislead the Government. He gave a number of excuses for his failure to give truthful and complete answers on his SCA. These included: he did not read the questions properly, he was tired and was thinking about going home, he was not in the right state of mind, he miscalculated or was confused regarding the dates for his marijuana conviction and possession, and he misunderstood the questions. I find that these reasons do not explain how his responses could be so incorrect, incomplete and misleading in five different responses.

Applicant offered into evidence one letter from an individual, who knows Applicant in his professional life (Exhibit C). He wrote in positive terms about Applicant.

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 19. (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. I, therefore, hold Guideline F against Applicant.

Guideline E, Personal Conduct

With respect to Guideline E, the evidence establishes that Applicant provided incorrect, untruthful, incomplete material information on five separate questions that he provided to the Government on the SCA that he executed on November 3, 2006. Because of the extent of his lack of honesty and candor regarding very clearly written questions, I find that Applicant did intend to mislead the Government.

In reviewing the DCs under Guideline E, I conclude that because Applicant deliberately omitted and concealed relevant facts from a SCA that DC 16. (a) applies against Applicant. I find no MCs can be applied. I therefore, resolve Guideline E 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 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, and his failure to give honest complete information to the Government, 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

Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e.:	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