



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



In the matter of:)
)
-----) ISCR Case No. 07-12433
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

February 26, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On February 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, J, 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 April 7, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on December 12, 2008. DOHA issued a notice of hearing on December 16, 2008, and the hearing was convened as scheduled on January 27, 2008, in Sacramento, California. The Government offered Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A and B, which were admitted without objection. DOHA received the transcript of the hearing (Tr) on February 4, 2009.

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: 1.a. through 1.j., under Guideline F, 2.a. through 2.h., under Guideline J, and 3.a. through 3.d., under Guideline E. All of 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 44 years old. He is married, and he has six children.

Applicant is employed as a mechanic 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 10 allegations of overdue debts, 1.a. through 1.j., under Adjudicative Guideline F. Applicant admitted that all of these debts remain overdue and unpaid in his RSOR. During his testimony, he gave some different and confusing explanations as to whether some of these debts had been resolved. However, since Applicant offered no evidence that he had paid anything on any of the debts, I find he failed to prove that any of them have been satisfied. 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 \$232.

1.b. This overdue debt also to Creditor 2 is cited in the SOR in the amount of \$5,060, for a judgement, as a result of Applicant's theft of a vehicle. Applicant previously claimed that he had paid this debt, but he has produced no documentation to show that the debt has been resolved, and on a February 7, 2008 credit report it show that this debt remains unpaid.

1.c. This third overdue debt to Creditor 3 is cited in the SOR in the amount of \$353.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$158.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$595.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$592

1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$5,540.

1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$3,572, for a civil judgement entered against him.

1.i. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$4,339.

1.j. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$168.

Paragraph 2 (Guideline J - Criminal Conduct)

The Government alleges that Applicant has engaged in criminal acts.

2.a. Applicant was arrested on or about August 24, 1986, and charged with (1) Hit and Run Resulting in Death/Injury, (2) Perjury, and (3) Perjury-Punishment. He was found guilty of Count (1) and was sentenced to serve 30 days in jail.

2.b. Applicant was arrested on or about October 19, 1990, and charged with Burglary 2nd Degree. He was found guilty and was sentenced to serve 36 months in jail, suspended, sentenced to serve 36 months of probation, and granted work release.

2.c. Applicant was arrested on or about November 23, 1993, and charged with (1) Grand Theft Property, and (2) Conspiracy.

2.d. Applicant was arrested on or about September 3, 1997, and charged with Convicted Felon in Possession of Firearm, a felony. He was convicted of a misdemeanor charge and sentenced to complete 180 hours of community service and awarded three years of probation. Six months after Applicant's sentence, he was arrested again and the misdemeanor charge was discarded, and he was convicted of the original felony charge. His probation period was increased to five years.

2.e. Applicant was arrested on or about October 4, 1999, and charged with (1) Failure to Provide for his Child, (2) Failure to Appear in Court, and twelve counts of Contempt of Court. He plead guilty to Count (2) and he was found guilty of all other counts. He was ordered to pay child support in the amount of \$400.00 per month to begin in February 2000. On August 3, 2005, the case was dismissed.

Applicant claimed that he served 45 days in jail for this charge, but ultimately he claimed that he was not overdue on his child support. No evidence was offered to support Applicant's claim that he was not guilty of the charge of failure to support his child.

2.f. Applicant was arrested on or about December 3, 1999, and charged with (1) Receive Stolen Property, (2) Chop Shop Operation, (3) Possession of a Controlled Substance, and (4) Vin/Serial Numbers Removed. He was found guilty of Count (1), sentenced to serve two days in jail, awarded five years of probation, ordered to take Theft Classes, and perform community service work. He was also ordered by the court not to possess firearms and to pay restitution in the amount of \$200.00.

2.g. Applicant was arrested on or about March 28, 2001, and charged with (1) Failure to Provide After Adjudication.

2.h. Applicant was arrested on or about May 24, 2001, and charged with (1) Failure to Provide for your Child, (2) Failure to Appear in Court, and five counts of Violation of Court Order. This case was transferred to a previously opened case against Applicant.

2.i. That information set forth under paragraph 3., below, which constitutes a violation of Federal law, Title 18, United States Code, Section 1001, a felony.

Paragraph 3 Guideline E, Personal Conduct

3.a. Applicant falsified material facts on a Security Clearance Application (SCA), executed by him on March 9, 2007, on which he was required to reply to the following questions: "Section 23: a. Have you ever been charged with or convicted of any felony offense? (Include those under the Uniform Code of Military Justice.); and "Section 23: b. Have you ever been charged with or convicted of a firearms or explosives offense?" and "Section 23: d. Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?"; and "Section 23: f. In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.)."

Applicant answered "Yes" to question 23.a., and listed his 1999 Receiving Stolen Property arrest and conviction. He answered "No" to the remaining questions (23.b., d. and f.) Applicant deliberately failed to provide that he had been charged with other felony offense(s), firearms offense(s), drug-related charge(s), and he had been arrested for, charged with and/or convicted of other offenses within the last seven years, as set forth in subparagraphs 2.a., 2.b., 2.c, 2.d., 2.f., 2.g. and/or 2.h., above.

3.b. Applicant falsified material on the following question of his SCA: "Section 27: d. In the last 7 years, have you had any judgments against you that have not been paid?"; to which he answered "No." Applicant deliberately failed to list that he had an unpaid judgments that had been filed against him within the last seven years, as set forth in subparagraphs 1.b. and 1.h., above.

3.c. Applicant responded "No" to: "Section 28: a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?" He deliberately failed to list that he had been over 180 days delinquent on the debts, as set forth in subparagraphs 1.a., 1.c., 1.d., 1.e., 1.f., 1.g., 1.i. and 1. j., above.

3.d. Applicant responded "No" to: "Section 28: b. Are you currently over 90 days delinquent on any debt(s)?" He deliberately failed to list that he was currently 90 days delinquent on the debts, as set forth in subparagraphs 1.a., 1.c., 1.d., 1.e., 1.f., 1.g., 1.i. and 1. j., above.

Applicant testified that he was not trying to mislead the Government, he simply misread or failed to understand the questions.

I find that his explanation does not explain how his responses could be so incorrect, incomplete and misleading in five different responses.

Applicant offered into evidence his performance review of 2008 (Exhibit A), which gave him an overall rating of "4" which means "Exceeds Standards." He also offered into evidence a Request For Change of Status Form, which recommended that he receive a pay increase as of March 5, 2007 (Exhibit B).

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. I, therefore, hold Guideline F against Applicant.

Guideline J - Criminal Conduct

The Government has established that Applicant engaged in criminal conduct on at least eight different occasions that spanned a period from 1986 to the most recent violation of Title 18, United States Code, Section 1001, a felony, when he furnished untruthful information on his 2007 SCA.

In reviewing the Disqualifying Conditions (DC) under Guideline J, DC 31. (a), a single serious crime or multiple lesser offenses, applies in this case. I find that no MC applies to this Applicant, because of the seriousness, extant and duration of Applicant’s criminal conduct. Applicant has not mitigated this allegation. Paragraph 2 is found against Applicant.

Guideline E- Personal Conduct

With respect to Guideline E, the evidence establishes that Applicant provided incorrect, untruthful, incomplete material information on several, separate questions that he provided to the Government on the SCA that he executed on March 9, 2007. 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, 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, J, 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, his history of criminal conduct, 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
Subparagraph 1.j.:	Against Applicant

Paragraph 2, Guideline J: 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
Subparagraph 2.f.:	Against Applicant
Subparagraph 2.g.:	Against Applicant
Subparagraph 2.h.:	Against Applicant
Subparagraph 2.i.:	Against Applicant

Paragraph 3, Guideline E: AGAINST APPLICANT

Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Against Applicant
Subparagraph 3.d:	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