



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



In the matter of:)	
)	
)	ISCR Case No. 07-12857
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

September 15, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on October 30, 2006. On February 7, 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) with attachments, in writing on March 7, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on June 24, 2008. DOHA issued a notice of hearing on July 9, 2008, and the hearing was convened as scheduled on August 12, 2008, in Honolulu, Hawaii. 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 entered into evidence without objection. DOHA received the

transcript of the hearing (Tr) on August 29, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 45 years old. He is currently married for the second time, and he has five children. He served in the United States Marines from 1979 to 2000, and he received an Honorable Discharge.

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 five allegations of overdue debts, 1.a. through 1.e., under Adjudicative Guideline F. All of the debts will be discussed 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 \$235. In his RSOR and during his testimony, Applicant argued that he has disputed this bill for a converter cable box, as he returned the box at the time. Attachment A of the RSOR shows a receipt from this creditor, indicating that this converter box was received on September 15, 2001. Attachment B is part of a Consumer Credit Report, showing that Applicant has disputed this bill to the credit reporting agency.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$17,260. Applicant explained during his testimony that there were several reasons why this bill for child support became overdue. He stated that the bill started out with it being \$3,500 in arrears, because the child support agency took such a long time telling him how much he should be paying. Then the amount he was ordered to pay did not reduce the arrearage which continued to grow. He also paid for the first two years, but he did not get credit for those payments

Applicant testified that he has never missed making every required monthly payment, since he was first ordered to pay for child support. He has been making two payments a month, both the one that is required each month and a second payment to reduce the arrearage, which Applicant stated has been reduced to \$14,000. Exhibit 5 shows the two monthly payments that had been \$585 and were reduced after he retired to \$345 that Applicant has been paying on this debt. He is now paying \$210 a month to reduce the arrearage.

Finally, he testified that he planned to refinance his home in March or April of 2009, and use the proceeds to pay off the arrearage.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$1,420. At the hearing, Applicant testified that he had been disputing this bill from a phone company, which he did not believe was accurate. He testified that even though he did not believe this bill was accurate, he did pay this bill. Exhibit B is a letter from the attorneys for this creditor, dated March 19, 2008, indicating that they have received \$1,320 on March 12, 2008, as payment in full on this debt. I conclude that this debt has been paid in full.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$30. Applicant testified that this debt and the debt marked as 1.e., below were for co-payments that were supposed to be paid by his former wife. However, since she did not meet her obligation, he has now paid this debt. Exhibit A is a letter from the collection agency of the creditor of this debt, dated June 24, 2008, indicating that they have received \$60 on April 21, 2008, as payment in full on this debt, and the debt which is listed below as 1.e. I conclude that this debt has been paid in full.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$30. As discussed in 1.d., above, this debt has also been paid in full.

Paragraph 2 Guideline E, Personal Conduct

2.a. Applicant executed a signed SCA on October 30, 2006 (Exhibit 1). Question 28.a. asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Question 28.b. asks, "Are you currently over 90 days delinquent on any debt(s)?" Applicant answered "No" to both of these questions, and he listed no debts. The Government alleges that Applicant should have included the debts listed as 1.a. through 1.e., discussed above in the SOR.

Applicant testified that he believed he was current on all of his debts or else that he was legitimately disputing them, and that he did not consider himself overdue on his debts when he completed the SCA. He had no intention of giving false or incorrect information to the Government when he completed the SCA.

Applicant explained that with the exception of the child support bill, he is current on all of his debts. His previous financial difficulties were incurred because of his divorce and the child support arrearage which arose through no fault of Applicant. He testified that he was able to purchase a home in March of 2008 for \$400,000, and he is making monthly payments of \$2,699 a month. He has not missed any payments on his mortgage.

Finally, two witnesses testified at the hearing on Applicant's behalf. One has known Applicant since the early 1980s during their active duty in the Marines. He is now Applicant's immediate supervisor. He described Applicant as forthright, and trustworthy, and he stated that Applicant does his job impeccably. The second witness has known

Applicant since 1979 during their active duty in the Marines. He is now a coworker of Applicant. He described the Applicant as a “stand up gentleman” who is honest and trustworthy.

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 (a) and DC (c) apply, because of Applicant’s history of not meeting financial obligations and his inability or unwillingness to satisfy his debts.

I find that Mitigating Condition (MC) (d) applies as Applicant has initiated a good-faith effort to repay the overdue creditors and resolve his debts, with only one debt that remains outstanding. Additionally, I find that the debt arose due to errors made by the child support agency. Not only did Applicant never miss a child support payment, but he actually paid child support for the first two years before he was ordered to do so, and he never received credit for those two years of payment. I, therefore, hold Guideline F for Applicant.

Guideline E, Personal Conduct

With respect to Guideline E, the evidence establishes that Applicant did not knowingly provide incorrect material information to the Government on the SCA that he executed on October 30, 2006. Of the five debts cited on the SOR, Applicant had a legitimated dispute with two, and he did know that his wife had not paid the other two, despite her agreement to do so. While the child support bill can be considered overdue, Applicant did not create this situation, and he believed it was being resolved. I find that Applicant did not intend to mislead the Government.

In reviewing the DCs under Guideline E, I conclude that no DC applies against Applicant. I therefore, resolve Guideline E for 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 20 year history in the Marines, the testimony of his two character witnesses, his resolution of all of his overdue debts except one, which he is working diligently to resolve, I find that the record evidence leaves me with no significant 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 has 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
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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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