



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-16983
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

August 7, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on October 24, 2006. On March 24, 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 May 8, 2008, and requested a hearing before an Administrative Judge. I received the case assignment on May 20, 2008. DOHA issued a notice of hearing on May 27, 2008, and I convened the hearing as scheduled on June 24, 2008. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through O, without objection. DOHA received the transcript of the hearing (Tr) on July 2, 2008. I granted Applicant's request to keep the record open until

July 8, 2008, to submit additional matters. He failed to submit any additional documents, and the record closed on July 8, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his RSOR Applicant admitted SOR allegations 1.a., 1.b., 1.f., 1.g., 1.h., 1.i., and 1.j., and he denied 1.c., 1.d., 1.e., and 2.a. 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 Answer to the SOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 47 years old. He is currently married for a second time, and he has three children and one stepchild.

Applicant works for defense contractors, 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 regarding financial difficulties under Adjudicative Guideline F (1.a. through 1.j). All of the allegations 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 \$304. Applicant testified that this debt was from a cable company for three pieces of equipment that remained in his possession. He claimed that he has now returned the pieces of equipment, and he had a receipt showing this debt had been resolved. Upon cross examination from Department Counsel, Applicant conceded that this was a different debt from this creditor, and he has not yet resolved this debt.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$610, and Applicant testified that it remains unpaid.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$2,169. Applicant testified that this debt had been paid. Exhibit O consists of a one page statement of account from this creditor, showing that the creditor has received full payment on this debt. I find that this previously overdue debt has been resolved.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$2,620, and it remains unpaid. Applicant testified that he had paid approximately \$6,000 to the collection agency for this debt as he was informed that \$6,000 would be payment in full. He was not sure why the credit report still show \$2,000 owing on this debt, but he is in

the process of disputing the \$2,000 remaining on this debt. Exhibit J is a letter from the collection agency for this creditor, which states that Applicant's payment had resolved this debt. It appears that Applicant has made a good faith effort to resolve this debt.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$5,654. Applicant testified that this debt for the repossession of a vehicle, that he cosigned for his daughter, has been paid. Exhibit K includes a copy of check made out to the creditor on February 8, 2008, in the full amount that is owing. I find that this previously overdue debt has been resolved.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$587, and Applicant testified that it remains unpaid.

1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$953, and Applicant testified that it remains unpaid.

1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$605, and Applicant testified that it remains unpaid.

1.i. In March 1997, Applicant filed a Chapter 7 petition of bankruptcy in the United States Bankruptcy Court.

1.j. In July 1997, the Chapter 7 bankruptcy petition, previously filed by Applicant on March 1997, discharged Applicant's debts. Applicant testified that his previous wife had incurred a considerable amount of debt while they were married. After they were divorced, she did not contribute to paying any of these debts, so he finally filed for bankruptcy, which did discharge all of his debts.

Applicant cited several factors for his current financial difficulties. When he was transferred because of his employment his income was reduced significantly. Also, his wife became unexpectedly pregnant, 19 years after her last pregnancy, and they incurred between \$5,000 and \$6,000 in medical bills, above what was covered under their insurance policy.

When he was transferred to California he continued to make payments on his home in New Mexico, which he has successfully retained. He also testified that he put between \$7,000 and \$9,000 into this home so it could be rented. As of the month of the hearing he now has a renter, and he will have an additional \$900 a month to help him resolve his overdue debts. He also sold a piece of property that he owned, and with the proceeds of that sale he paid \$21,000 for one year rent, which will soon end, for a home for him and his wife and new son.

Applicant testified that his plan has been to resolve the largest overdue debts first and then take care of the smaller one. He represents that his current finances are in good order and he believes that he will be able to pay all his current and future bills in a timely manner.

Paragraph 2 Guideline E, Personal Conduct

2.a. Applicant executed a signed Security Clearance Application (SCA) on October 24, 2006 (Exhibit 1). Question 28A asks, if in the last 7 years, Applicant has been over 180 days delinquent on any debt(s)?” Applicant answered “No” to this question. The Government alleges that Applicant should have answered “Yes” to this question and included the debts listed as 1.a. through 1.h., in the SOR.

Applicant agreed that he should have responded “Yes” to that question and included all of his debts, but he averred that through inattentiveness he did not list the debts on the SOR. He testified credibly that he did not intend to mislead the Government on his SCA, and he pointed out other errors that he made on the SCA to show that he was not as careful as he should have been, but he did not knowingly furnish false 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 some obligations for a period of time. 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:

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, some of the financial problems arose from Applicant’s transfer of employment with significant loss of income, the dissolution of his previous marriage which resulted in his bankruptcy

filing in 1997, and the medical bill of his current spouse, because of her unexpected pregnancy. Applicant acted responsibly in continuing to pay his for the support of his wife and his their new son and managing his property assets by repairing his home so it could be rented out. I find this potentially mitigating condition is a factor for consideration in this case.

AG ¶ 20 (d) is also applicable as the evidence is clear that Applicant has initiated a good-faith effort to repay his overdue creditors and otherwise resolve his debts. Applicant has now reduced his overdue debt from \$13,502 to \$3,059, and he has indicated he will be able to resolve the remainder as well.

Applicant has now satisfied most of his financial difficulties, and he is better prepared for future contingencies. I conclude these potentially mitigating conditions apply.

GUIDELINE E, PERSONAL CONDUCT

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

While AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying, I find that none apply in this case. As discussed above, Applicant was credible in his testimony that he did not knowingly furnish the Government with false or incomplete information regarding his finances on questions 28a of the SCA that he completed.

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 reasons for his previous financial difficulties, his conscientious efforts to resolve his overdue debts, and his improving economic condition today, I find that the record evidence leaves me without 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 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge