



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09589
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

August 26, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On January 23, 2009, 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 9, 2009, and requested a hearing before an Administrative Judge. I received the case assignment on March 26, 2009. DOHA issued a notice of hearing on April 22, 2009, and I convened the hearing as scheduled on June 4, 2009, in Las Vegas, Nevada. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and one additional witness testified on behalf of Applicant. He also submitted Exhibits A through M, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on June 11, 2009. I granted Applicant's

request to keep the record open until June 18, 2009, to submit additional documents. He timely submitted a cover letter, and additional documents, which have been marked collectively as Exhibit N, which has been entered into evidence without objection. 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 RSOR, the admitted documents, and the testimony of Applicant and the additional witness, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 30 years old. He is unmarried and he has no children. He is a high school graduate. 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 10 allegations (1.a. through 1.j.) regarding financial difficulties under Adjudicative Guideline F, with the overdue debts. 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 \$958. At the hearing, Applicant testified that this debt for an ambulance bill has been paid. He had been waiting for his insurance carrier to pay for this debt, but ultimately he paid the bill himself. Exhibit F establishes that Applicant paid the full amount of this debt on February 24, 2009.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$27. Applicant testified that this debt for a radiology bill has been paid. Exhibit G establishes that Applicant paid the full amount of this debt on November 28, 2008.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$659. Applicant testified that this debt for a video box has been paid. Exhibit H establishes that Applicant owed \$432.62 on this debt, and he paid this amount to settle the debt on February 23, 2009.

1.d. This second overdue debt to Creditor 3 is cited in the SOR in the amount of \$237. Applicant testified that he also paid this debt to the same creditor. Exhibit H establishes that Applicant paid \$242.79 to settle the debt on December 1, 2008.

1.e. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$8,180. Applicant testified that this debt for a loan, which was \$4,100, but had been increased to the amount stated on the SOR, an amount which was disputed by Applicant, has been paid. Exhibit I shows that Applicant made a payment of \$500 on February 2, 2009, and a second payment of \$3,600 on February 25, 2009, and the credit reports establish that this debt has been resolved.

1.f. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$9,654. Applicant testified that he is making payments of \$100 a week for both this debt and 1.g., below. At the time of the hearing, he had made 10 or 11 payments. Exhibit E establishes that Applicant had made at least eight payments of \$100 from April 10, 2009 to May 15, 2009.

1.g. This second overdue debt to Creditor 5 is cited in the SOR in the amount of \$7,894. As reviewed above, Applicant's payments of \$100 a week are for payments of this debt and 1.f. Applicant stated that if he continued to pay the amount of \$100 a week, he would pay off these two debts by February 2012. However, he averred that he plans to increase the payments after all of his other debts are paid so the debt should be resolved sooner.

1.h. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$539. Applicant testified that this debt for a gym membership has always been paid on time, so it never should have been reported to a credit reporting agency as overdue. Exhibit J is a receipt from this creditor, showing that Applicant made a payment of \$400 on September 2008, to keep his gym membership up to date.

1.i. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$339. Applicant testified that this debt has been paid. Exhibit K establishes that Applicant paid \$194.08 on November 17, 2008, and he made a second payment of \$194.08 on November 24, 2008.

1.J. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$110. Applicant testified that this debt for another gym membership has been paid. Exhibits D and L establish that Applicant paid \$161 on this debt, on February 2009, and it has been deleted from his credit report.

Applicant testified that his financial difficulties primarily began when he moved with his girlfriend from City A back to his hometown in August 2006, and the cost of moving and establishing new residence eliminated most of his assets. Additionally, his girlfriend was unemployed for a period of time, and his earnings were diminished, so for approximately 1 ½ years his income was less than adequate to resolve all of his debts. He averred that before the move, he had never been late in paying of his debts.

The next year, in August 2007, he moved back to City A. Since 2007, he has taken two jobs, and he has been able to stabilize his finances, and resolve most of his past overdue debts.

Applicant testified that he is current on all of his recent debts. He also testified very credibly that he is extremely motivated to resolve the two overdue debts that have not yet been fully resolved, but on which he has been paying \$100 a week (Tr at 59).

Applicant's current girlfriend testified on his behalf. She has known him for 1½ years, and she averred that he is honest, hard-working and a man of honor. She further testified that paying his past debts is very important to him. They now pay their more

recent bills together, and she believes they are not overdue on any of these recent debts.

In his post hearing Exhibits, Applicant submitted three Personal Financial Statements (Exhibit N), which establish that Applicant's financial condition continues to improve. Exhibit N shows that on November 3, 2008, Applicant's monthly net remainder was \$30.05, on February 16, 2009, his net remainder was \$655.35, and by June 4, 2009, his net remainder had increased to \$784.35.

Finally, Applicant submitted three character letters (Exhibits A through C). All of them were extremely laudatory in the descriptions of 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 security 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 classified 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 security 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 has been unable to pay the majority of his 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:

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 reduction in income and his girlfriend’s unemployment for a period of time. Prior to this period, Applicant did not have overdue debts. Additionally, Applicant has now acted responsibly by resolving all of his debts but two, and he has been paying \$100 a week to resolve those. Therefore, I find that this mitigating condition is a factor for consideration in this case.

Applicant has resolved the great majority of his overdue debt, and I conclude he is responsibly pursuing a course to reduce the last remaining two debts. Therefore, I find that he has mitigated the financial concerns of the Government.

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) the 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 Condition 20 (b) applies, and considering the positive testimony and character letters in evidence, 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 in the SOR.

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

Subparagraphs 1.a through 1.j.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge