



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09520
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

December 11, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On May 13, 2009, 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.

On July 7, 2009, Applicant replied to the SOR (RSOR) in writing, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on August 5, 2009. DOHA issued a notice of hearing on September 1, 2009, and an amended notice of hearing was issued on September 18, 2009. I convened the hearing as scheduled on September 25, 2009, in Las Vegas, Nevada. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted no documents. One additional witness testified on behalf of Applicant.

At Applicant's request, the record remained open until October 9, 2009, to allow Applicant to submit documents. Documents were received from Applicant in a timely manner, including a letter, written by Applicant to Trans Union on February 9, 2009, and marked as Exhibit A, and three character letters, identified as Exhibit B. Both exhibits have been entered into evidence without objection. DOHA received the transcript of the hearing (Tr) on October 8, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

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 following findings of fact:

Applicant is 35 years old. He has been married to his current wife since 2005, and he was previously married from 1994 until 2000. 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 29 allegations (1.a. through 1.cc.) regarding financial difficulties under Adjudicative Guideline F, for overdue debts. In the RSOR, Applicant admitted each allegation. During his testimony, he stated that he has disputed some of the debts and made payments on some of the others. However, he did not know on which of the debts he had made payments (Tr at 27-30). As discussed above, the record remained open until October 9, 2009, for Applicant to offer documentation to establish on which debts he had made payments and the amount of payment made. While some documentation was offered into evidence, no evidence was submitted to show that any payments had been made on any debts. The debts will be discussed in the same order as they were listed in the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$397. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.b. This overdue debt is cited in the SOR in the amount of \$170. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.c. This overdue debt is cited in the SOR in the amount of \$3,428. Exhibit A, a letter from Applicant dated February 9, 2009, to the credit reporting agency, shows that Applicant disputed this debt. However, no evidence was submitted to show that this debt has been resolved. Therefore, I find that Applicant owes this debt.

1.d. This overdue debt is cited in the SOR in the amount of \$125. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.e. This overdue debt is cited in the SOR in the amount of \$3,425. Exhibit A shows that Applicant disputed this debt. However, no evidence was submitted to show that this debt has been resolved. Therefore, I find that Applicant owes this debt.

1.f. This overdue debt is cited in the SOR in the amount of \$554. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.g. This overdue debt is cited in the SOR in the amount of \$5,613. Exhibit A shows that Applicant disputed this debt. However, no evidence was submitted to show that this debt has been resolved. Therefore, I find that Applicant owes this debt.

1.h. This overdue debt is cited in the SOR in the amount of \$520. Exhibit A shows that Applicant disputed this debt. However, no evidence was submitted to show that this debt has been resolved. Therefore, I find that Applicant owes this debt.

1.i. This overdue debt is cited in the SOR in the amount of \$1,638. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.j. This overdue debt is cited in the SOR in the amount of \$2,533. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.k. This overdue debt is cited in the SOR in the amount of \$214. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.l. This overdue debt is cited in the SOR in the amount of \$137. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.m. This overdue debt is cited in the SOR in the amount of \$164. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.n. This overdue debt is cited in the SOR in the amount of \$640. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.o. This overdue debt is cited in the SOR in the amount of \$516. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.p. This overdue debt is cited in the SOR in the amount of \$274. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.q. This overdue debt is cited in the SOR in the amount of \$325. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.r. This overdue debt is cited in the SOR in the amount of \$626. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.s. This overdue debt is cited in the SOR in the amount of \$75. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.t. This overdue debt is cited in the SOR in the amount of \$50. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.u. This overdue debt is cited in the SOR in the amount of \$391. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.v. This overdue debt is cited in the SOR in the amount of \$116. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.w. This overdue debt is cited in the SOR in the amount of \$309. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.x. This overdue debt is cited in the SOR in the amount of \$498. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.y. This overdue debt is cited in the SOR in the amount of \$6,305. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.z. This overdue debt is cited in the SOR in the amount of \$910. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.aa. This overdue debt is cited in the SOR in the amount of \$151. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.bb. This overdue debt is cited in the SOR in the amount of \$136. No evidence was offered to show Applicant made any payments on this debt. I find this debt is still due and owing.

1.cc. This overdue debt is cited in the SOR in the amount of \$711. Exhibit A shows that Applicant disputed this debt. However, no evidence was submitted to show that this debt has been resolved. Therefore, I find that Applicant owes this debt.

Applicant testified that his financial difficulties occurred because of a number of factors including: making poor financial choices, a previous marriage and subsequent divorce, being employed in the field of construction, which can be unstable, and having to take care of his wife and their seven children (Tr at 38-39).

Paragraph 2 Guideline E, Personal Conduct

2.a. Applicant executed a signed Security Clearance Application (SCA) on July 18, 2008 (Exhibit 1). 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.a. through 1.aa., above. I find that Applicant should have included all of the debts listed on the SOR.

2.b. Question 28.b. of the SCA 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.a. through 1.aa., above. I find that Applicant should have also included all of the debts listed on the SOR.

During cross examination by Department Counsel, Applicant conceded that he knew he had overdue debts when he completed the SCA, but since he did not know all of them, he simply answered that he had no overdue debts. He contended that he was not aware that he had the option to at least admit that he had overdue debts, but explain that he was not aware of all of the overdue debts (Tr at 40-41). Applicant also conceded that he never inquired as to how he should complete the SCA, if he was not aware of all of his debts (Tr at 50-51).

One witness testified on Applicant's behalf. This individual has worked with Applicant in the past, and he described Applicant as a "straight up family guy." However, the witness was unaware of Applicant's financial difficulties and overdue debts, so I consider his testimony to be of limited value.

Applicant offered into evidence three letters from an individuals who know Applicant in his private life (Exhibit B). They all wrote in positive terms about Applicant, describing him as "very dependable, reliable, hard-working, conscientious, and honest."

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 commonsense 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 his obligations for a considerable period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

Since no independent evidence was offered to establish that Applicant has resolved any of his very significant debt, I do not find that any Mitigating Condition (MC) is applicable. I conclude that until he is able to significantly reduce this debt, and establish a more stable financial picture, he has not mitigated the financial concerns of the Government.

Guideline E, Personal Conduct

With respect to Guideline E, the evidence establishes that Applicant knowingly provided incorrect, untruthful, incomplete material information to the Government on the SCA that he executed on July 18, 2008. Because 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 Disqualifying Conditions (DCs) under Guideline E, I conclude that because Applicant deliberately omitted and concealed relevant facts from an 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) 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 the Disqualifying Conditions apply and why no Mitigating Condition applies under Guidelines F and E, 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
Subparagraphs 1.a through 1.cc.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a .and 2.b.:	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