



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



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| In the matter of: |) | |
| ----- |) | |
| |) | ISCR Case No. 08-03307 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

September 15, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On February 28, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and J 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 adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On April 21, 2011, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on May 18, 2011. DOHA issued notices of hearing on June 20, 2011, and June 22, 2011, and I convened the hearing as scheduled on July 13, 2011. The Government offered Exhibits 1 through 10, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through H, at the time of hearing, which were also admitted without objection. Applicant's wife also testified on his behalf. DOHA received the transcript of the hearing (Tr) on July 26, 2011. I granted Applicant's request to keep

the record open until July 27, 2011, to submit additional documents, and additional documents that were received have been identified and entered into evidence without objection as Exhibit I. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and the additional witnesses, 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 his wife, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 39 years old. He is married, and he and his wife have three children. 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 eight allegations (1.a., 1.c. through 1.i.) regarding overdue debts under Adjudicative Guideline F. No allegation of overdue debt was cited for 1.b. in the SOR in my file or that of the Department Counsel. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for a judgement in the amount of \$1,660. At the hearing, Applicant testified that he had paid this debt on December 7, 2009. (Tr at 33-34.) Exhibit D included an Acknowledgment of Satisfaction of Full Judgement showing that this judgement has been satisfied. I find that this debt has been resolved.

1.b. There is no allegation 1.b.

1.c. This overdue debt is cited in the SOR for a judgement in the amount of \$2,013. Applicant testified that he had paid this debt on July 9, 2008. (Tr at 40-41.) Exhibit D included an Acknowledgment of Satisfaction of Full Judgement showing that this judgement has been satisfied. I find that this debt has been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$74. Applicant testified that he had paid this debt on October 4, 2010. (Tr at 40-41.) Applicant submitted a letter from this creditor showing that this debt was paid in full. (Exhibit D.) I find that this debt has been resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$11,787. Applicant testified that he settled this debt on March 31, 2011, by paying \$6,000. He withdrew \$8,500 from his Thrifts Savings Plan (TSP) to pay this debt. (Tr at 42-43.) Applicant submitted a letter from this creditor showing that this debt was paid in full. (Exhibit D.) I find that this debt has been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$2,649. Applicant testified that he settled this debt on March 31, 2011, by paying \$1,000. (Tr at 43-44.) Applicant submitted a letter from this creditor showing that this debt was satisfied. (Exhibit D.) I find that this debt has been resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$175. Applicant testified that he settled this debt on March 18, 2011, by paying \$100. (Tr at 44-45.) Applicant submitted a letter from this creditor showing that this debt was settled in full. (Exhibit D.) I find that this debt has been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$14,540. Applicant testified that this debt is the same as that listed as 1.e., above, and he settled it for \$6,000. (Tr at 43, 45-46.) Applicant submitted a letter from this creditor showing that this debt is the same as 1.e., and it was settled in full. (Exhibit D.) I find that this debt has been resolved.

1.i. This overdue debt is cited in the SOR in the amount of \$120. Applicant testified that he settled this debt on October 20, 2009. (Tr at 46.) Applicant submitted a letter from this creditor showing that this debt was paid in full. (Exhibit D.) I find that this debt has been resolved.

Applicant testified that the majority of his financial problems occurred because his wife had an alcohol problem, and since she was “taking care of the finances,” he was unaware of the credit card debt that she was incurring until it had mushroomed into a significant amount of overdue debt. Applicant engaged the services of a debt consolidation company, paid them \$1,500 in total, and instructed them to contact his creditors to attempt to resolve his debts. However, unbeknownst to him, they did not contact the creditors and several of the debts went to judgment. Ultimately, he resolved the overdue debts himself. (Tr at 46-50.)

Applicant testified that his current financial situation is up to date with no overdue debts. He subscribes to a credit reporting agency, which gives him access to his credit reports on a daily basis. He reviews his reports every other day, and his credit score has gone from 492 to 635, a significant increase. He’s lived with his family in his current home for approximately one year, and he has never been late with his monthly rental payment. (Tr at 55-68.)

Paragraph 2 (Guideline J - Criminal Conduct)

The SOR alleges that Applicant has engaged in criminal acts.

2.a. The SOR alleges that in August 2008 Applicant was arrested and charged with two counts of Inflicting Corporal Injury on a Spouse/Cohabitant- a felony. Applicant pled guilty to the lesser charge of False Imprisonment. As a result, he was placed on three years probation, which was due to expire on April 8, 2012, and to pay a fine.

Applicant testified that his wife developed a problem with alcohol. One day she came home with a cut on her face from what he believed to be her climbing among the trees, which she had done previously when she was intoxicated. Several days later he was concerned about her safety because of her erratic behavior, and he phoned the police. Ultimately, the police charged Applicant with battery on his wife, based on what she told them.

Applicant averred that he had not struck his wife, and she recanted her story, telling the police he had not struck her. However, the charges were not dropped, and since he was informed it was going to cost him \$15,000 to continue with the case in court, and his wife was developing hives because of the stress, he chose to plead the case down to the charge of False Imprisonment, pay a \$150 fine, attend a class, and he was placed on three years probation. Applicant testified that his wife no longer consumes alcohol, they have gone to family counseling, and their relationship has significantly improved. (70-80.)

Exhibit F includes the court documents regarding allegation 2.b. The last document is a minute order stating that on April 19, 2011, Applicant's conviction was set aside and a plea of Not Guilty was ordered and the case was dismissed. Itt also stated that Applicant's wife was present and agreed with the dismissal.

Mitigation

As stated above, Applicant's wife testified on Applicant's behalf. She confirmed that she took out a number of credit cards in Applicant's name and purchased items, all without Applicant's knowledge. By the time he became aware of the situation, their bills were severely overdue. She has now been sober for three years, but her alcoholism contributed to the financial difficulties, and also to their marital problems. She now attends counseling sessions every other week, and she attends Alcoholics Anonymous on a regular basis.

Most significantly, she confirmed that her husband had never stuck her, but she received the cut that was the subject of the arrest from falling in the bushes when she was intoxicated. She also confirmed she no longer consumes alcohol, and their relationship has greatly improved. (Tr at 87-94.)

Applicant submitted 16 extremely positive character letters from family, friends and those who know Applicant in the work environment. One co-worker described his "significant integrity and ethical behavior" in his actions and his words. He was also described as someone having "a high degree of integrity, responsibility and ambition." (Exhibit B.) He also submitted a packet of awards received by his family and other information about his family. (Exhibit C.)

Exhibit H is Applicant's current credit report establishing that his current credit score is 635 for Experian, 635 for Equifax and 645 for TransUnion. Finally, Applicant also forwarded his Performance Plan and Review from his employer on January 19, 2011. (Exhibit I.) His overall performance was rated "Fully Effective."

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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

Paragraph 1 (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 and could potentially apply in this case. 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. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant has accumulated significant delinquent debt.

AG ¶ 20 provides conditions that could mitigate security concerns 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, Applicant testified that his financial problems resulted from his wife obtaining credit cards and not paying the bills on the items that she purchased, all without Applicant's knowledge. I find that he acted responsibly, once he became aware of the overdue debts. Applicant first engaged the services of a debt consolidation company, paying them \$1,500, and then when they did not fulfill their contract, he paid off his debts himself. He has now resolved all of his overdue debts. Therefore, I find that this mitigating condition is a factor for consideration in this case.

Finally, AG ¶ 20(d) is applicable since Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." I find that this mitigating condition is also a factor for consideration in this case.

I conclude that Applicant has resolved all of his overdue debt, and he has shown that he and his wife can maintain more financial stability. Therefore, he has mitigated the financial concerns of the Government.

Paragraph 1 (Guideline J - Criminal Conduct)

The Government established that Applicant was arrested, charged, and pled guilty to criminal conduct, as alleged in subparagraph 2.a. However, based on the very credible testimony of Applicant and his wife, I am convinced that the underlying conduct that is the basis for the criminal charges, namely Applicant striking his wife, did not occur.

I find that no Disqualifying Condition under ¶ 31 is applicable to this case. Paragraph 2, Guideline J is found 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) 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 Mitigating Conditions apply under Guideline F, and the reason that no Disqualifying Conditions are present under Guideline J, considered together with the positive character letters on behalf of Applicant, 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:

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| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a through 1.i.: | For Applicant |
| Paragraph 2, Guideline J: | 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