



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-04017
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Edward O. Lear, Esquire

February 17, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On July 22, 2008, 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, 1990), 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 August 14, 2008, and requested a hearing before an Administrative Judge. I received the case assignment on September 24, 2008. DOHA issued a notice of hearing on November 3, 2008, scheduling the hearing for December 11, 2008. At the request of counsel for Applicant, the hearing was continued to December 15, 2008. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through L, which were also entered into evidence without objection. DOHA received the transcript of the hearing (Tr) on December 29, 2008. I

granted Applicant's request to keep the record open until December 22, 2008, to submit additional matters. He submitted Exhibit M, a letter from his attorney and a cohabitation agreement, that will be discussed below, dated January 12, 2009, a date clearly beyond the date I granted for the record to remain open. However, since Department Counsel indicated that he had no objection to this letter being entered into evidence, and since the late date of the letter was because of a later development, I have admitted Exhibit M into evidence. 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 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 52 years old. He is divorced and has three children.

Applicant is employed by a defense contractor as a Systems Engineer, and he seeks a DoD security clearance in connection with his employment in the defense sector.

The SOR lists 3 allegations regarding financial difficulties, specifically overdue debts, under Adjudicative Guideline F. 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 \$12,871.
- 1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$4,209.
- 1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$4,712.

Applicant testified that these three debts were incurred by both him and his wife at the time, with whom he is now involved in divorce proceedings, as community debt. The debts for 1.a. and 1.b. were primarily for the start up of his wife's business, when they were married. It is his contention that both parties are responsible for resolving these debts, and currently negotiations are ongoing as to how and by whom the debts would be resolved.

Exhibit A is a letter from the former attorney for Applicant's ex-wife, dated August 9, 2007, with a proposed settlement between Applicant and his ex-wife. Among the issues proposed and the one specifically identified by Applicant is paragraph 2, in which it was proposed that Applicant's ex-wife would accept and resolve all of the community property debt, identified as approximately \$160,000, in lieu of her being awarded her medical practice. Applicant testified that not only would this proposal resolve these debts, but as a medical doctor, his ex-wife is in a position to carry out this proposal if it

is ultimately accepted. He introduced her Curriculum Vitae to establish her impressive credentials as medical doctor (Exhibit B).

Applicant testified that he is an electrical engineer with a bachelor's degree, to indicate that his earning potential is also sufficient to resolve these debts. He submitted his college transcript (Exhibit C) and a copy of his diploma (Exhibit D) to establish the training that he received to become an electrical engineer. He also introduced an earning statement to show that he is currently earning approximately \$86,000 a year (Exhibit L). Finally, Applicant testified that he owns a piece of property, and that while it was not his desire, he could sell the property to pay off the overdue debts (Tr at 49-50).

Applicant also introduced a letter from his attorney, dated July 14, 2008, with Applicant's proposed settlement of the community debts (Exhibit K).

Exhibit M, the post hearing letter from Applicant's attorney, states that Applicant and his ex-wife have made an agreement to begin cohabiting "in an effort to settle their collective debts as well as to reduce their expenses." Based on this agreement the former husband and wife would share a home so that they could reduce their debt to only one home payment.

Applicant introduced evidence to suggest that these debts could and would eventually be resolved. Unfortunately, at this time none of the three debts has been reduced or resolved in any way. The debts are all still outstanding, and no apparent attempt has been made to work with the creditors to resolve these debts or make some kind of payment arrangements.

Applicant offered into evidence three positive character letters (Exhibits E, F and H). He also submitted a series of pictures, drawings and other memorabilia (Exhibit H) to confirm how devoted he is to his children.

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 Disqualifying Condition (DC) 19 (a), an Inability or unwillingness to satisfy debts is potentially disqualifying. Similarly under DC 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:

Mitigating Condition 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, could initially be argued to apply in this case. As noted above, the financial problems arose primarily from Applicant's divorce. However, I can not find that Applicant has acted responsibly by contacting the creditors and making any kind of attempt to resolve these long overdue debts. Until such time as Applicant makes a good faith effort to resolve these overdue debts, I can not find this potentially mitigating condition is a factor for consideration in this case.

At this time, I can not conclude that Applicant has mitigated the financial concerns.

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 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 DC (a) and (b) apply, and why MC (b) does not apply, I find that the record evidence leaves me with 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 not mitigated the security concerns until has made a good faith effort to resolve his overdue debts.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	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