



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-04809
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

November 20, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on April 6, 2006. On June 30, 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, 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 July 28, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on August 20, 2008. DOHA issued a notice of hearing on September 16, 2008, and the hearing was convened as scheduled on October 20, 2008, in Woodland Hills, California.

The Government offered Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through G. All of Applicant's exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr) on October 28, 2008. I granted Applicant's request to keep the record open until October 27, 2008, to submit additional documents. He timely submitted a cover letter, and three additional documents, which have been marked as Exhibits H through K, respectively, and entered into evidence without objection. The record closed on October 27, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Prior to the admission of evidence, the SOR was amended because there had been a clerical error, which manifested itself in two separate allegations of paragraphs 1.c. and 1.d. Therefore the allegations have been renumbered, and they now are listed from 1.a. through 1.o, rather than 1.a. through 1.m., as originally alleged in the SOR.

Findings of Fact

In his RSOR, Applicant admitted SOR allegations: 1.a., 1.b., 1.c., 1.e., 1.f., 1.g., and 1.k., and he denied all of the other allegations. 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 RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 49 years old. He is married, and he and his wife have four sons.

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 14 allegations of overdue debts totaling \$19,450, 1.a. through 1.o., 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 is cited in the SOR in the amount of \$5,477. Applicant testified that this overdue debt resulted from unpaid rent for an apartment from which he was eventually evicted. He contacted the creditor for this debt, but he has not made any payments to resolve this debt, because he did not have the funds available to make a down payment on this debt.

1.b. This overdue debt is cited in the SOR in the amount of \$166. Applicant testified that this is a valid debt, but no action has yet been taken from Applicant to resolve this debt.

1.c. This overdue debt is cited in the SOR in the amount of \$4,496. Applicant testified that this overdue debt resulted from unpaid rent for an apartment from which he was eventually evicted. He contacted the creditor for this debt, but he has not made

any payments to resolve this debt, because he did not have the funds available to make a down payment on this debt.

1.d. This overdue debt is cited in the SOR in the amount of \$422. Applicant testified that this debt has been paid. Exhibit D shows that this debt was paid from the proceeds of a sale of Applicant's home on October 14, 2004. This debt has been resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$3,866. Applicant testified that this bill is for a vehicle that was repossessed in 2006, and it has not been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$166. Applicant's did not recall the origination of this debt, but it appears to be the same debt as 1.b., above. I will not consider this debt that this debt is owed, since it has been reviewed in 1.b., above.

1.g. This overdue debt is cited in the SOR in the amount of \$2,274. Applicant testified that he is making monthly payments of \$30 to pay off this debt. Exhibit F establishes that Applicant has thus far paid \$420 on this debt.

1.h. This overdue debt is cited in the SOR in the amount of \$64. Applicant testified that this debt has been paid. Exhibit D shows that this debt was paid from the proceeds of a home sale on October 14, 2004. This debt has been resolved.

1.i. This overdue debt is cited in the SOR in the amount of \$193. Applicant testified that this debt has been paid. Exhibit D shows that this debt was paid from the proceeds of a home sale on October 14, 2004. This debt has been resolved.

1.j. This overdue debt is cited in the SOR in the amount of \$759. Applicant testified that this debt has been paid. Exhibit D shows that this debt was paid from the proceeds of a home sale on October 14, 2004. This debt has been resolved.

1.k. This overdue debt is cited in the SOR in the amount of \$364. Applicant testified that he contacted the creditor for this debt, but he has not made any payments to resolve this debt, because he did not have the funds available to make a down payment on this debt.

1.l. This overdue debt is cited in the SOR in the amount of \$191. Applicant testified that he believed that he had paid this is medical bill, but he was not sure and he had no documentation to prove it. I can not find that this debt has been resolved.

1.m. This overdue debt is cited in the SOR in the amount of \$404. Applicant testified that this medical bill has been paid. Exhibit D shows that this debt was paid from the proceeds of a home sale on October 14, 2004. This debt has been resolved.

1.n. This overdue debt is cited in the SOR in the amount of \$727. Applicant testified that this medical bill has been paid. Exhibit D shows that this debt was paid from the proceeds of a home sale on October 14, 2004. This debt has been resolved.

1.o. This overdue debt is cited in the SOR in the amount of \$56. Applicant testified that this medical bill has been paid. Exhibit D shows that this debt was paid from the proceeds of a home sale on October 14, 2004. This debt has been resolved.

Applicant explained that he and his wife have struggled with their finances at different times during their marriage. At one point in 2006, his wife lost her job, and she could not work for a period of time because of illness. Applicant also received a reduction in pay when he job was eliminated and he had to take another position within the company.

Applicant also had financial problems, because his son was arrested, and Applicant had to pay for his bail. His one son is now incarcerated, but he still supports his other three sons.

Applicant appears to be timely with his current debts. He has no credit cards, and has only one older model vehicle, which has been paid for. Additionally, Applicant's is working a second to job to have increased income and his wife is working full time. However, during his testimony, he conceded that he does not have much left each month after paying his debts, and he is barely scraping by.

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 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 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 much of these debts. While he was able to pay off some of his debts in 2004, from the sale of his home, since then he has only made payments of \$30 a month on one of his other overdue debts, and at this time he still has more than \$16,000 of long overdue debt, with little apparent opportunity to pay off these debts. The evidence is sufficient to raise these disqualifying conditions.

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, the financial problems arose in part from Applicant's wife losing her job for a period. However, I can not find that this Mitigating Condition applies since Applicant has not acted responsibly, because, with the exception of those debts that he resolved in 2004, he has not yet begun to make a good faith effort to resolve and repay all of the other overdue debts.

I find that Applicant is not yet financially sound and prepared for future contingencies. I conclude that he has not 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 Mitigating Condition (b) does not apply, considered with Applicant's inability to resolve the significant amount of overdue debt, I find that the record evidence leaves me with considerable 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 failed to mitigate 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

Subparagraph 1.a through o: 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