



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-09092
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

March 9, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On June 30, 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.

On July 22, 2009, Applicant replied to the SOR (RSOR) in writing, and requested a hearing before an Administrative Judge. I received the case assignment on August 26, 2009. DOHA issued a notice of hearing on September 17, 2009, and I convened the hearing as scheduled on October 15, 2009, in Las Vegas, Nevada. The Government offered Exhibits 1 through 7, 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. DOHA received the transcript of the hearing (Tr) on October 30, 2009. I granted Applicant's request to keep the record open until

October 29, 2009, to submit additional documents. He timely submitted two additional documents, which have been identified and entered into evidence collectively as Exhibit I. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his RSOR, Applicant admitted SOR allegations: 1.a. through 1.g., and 1.i. through 1.k. He denied 1.h. 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 additional findings of fact:

Applicant is 51 years old. He is currently unmarried, but he was previously married, and he has one son. At the time of the hearing, Applicant was employed as a Quality Analyst by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

The SOR lists 11 allegations (1.a. through 1.k.) regarding financial difficulties under Adjudicative Guideline F, for overdue debts totaling \$265,645. 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 \$229. Applicant testified that he plans to contact this creditor and work out a payment arrangement. However, at the time of the hearing, this debt has not been paid or reduced (Tr at 36-37).

1.b. This overdue debt is cited in the SOR in the amount of \$185,000. Applicant testified that, as of three months before the hearing, he has become current on this debt for the mortgage on his home (Tr at 37-39). Exhibit I includes the monthly mortgage statement on this debt, which establishes that Applicant still owes \$180,865, but he is current on this debt, and he is paying \$1,325.16 a month. Applicant testified that this house had been in foreclosure on two previous occasions because of his failure to pay the mortgage (Tr at 57).

1.c. This overdue debt is cited in the SOR in the amount of \$1,157. Applicant testified that he plans to contact the creditor for this credit card debt and work out a payment arrangement. However, at this time, this debt has not been paid or reduced (Tr at 39).

1.d. This overdue debt is cited in the SOR in the amount of \$17,000. Applicant testified that a judgement has been entered against him on this credit card debt. At this time, this debt has not been paid or reduced (Tr at 39-42).

1.e. This overdue debt is cited in the SOR in the amount of \$5,553. Applicant testified that a judgement is in the process of being entered against him on this credit card debt. At this time, this debt has not been paid or reduced (Tr at 42).

1.f. This overdue debt is cited in the SOR in the amount of \$3,014. Applicant testified that he plans to contact the creditor for this credit card debt for the purchase of a computer and equipment to work out a payment arrangement. However, at the time of the hearing, this debt had not been paid or reduced (Tr at 42-43).

1.g. This overdue debt is cited in the SOR in the amount of \$13,000. Applicant testified that this debt is for a car that he purchased. He had allowed his former girlfriend to use it, and although he now has possession of the vehicle, he has not returned it to the creditor to potentially reduce the size of the debt. This debt has not been paid or reduced (Tr at 43-46).

1.h. This overdue debt is cited in the SOR in the amount of \$13,000. As stated above, Applicant denied this allegation in his RSOR. At the hearing, he stated that he is paying \$100 a month on this debt for more than one year (Tr at 46-47). Exhibit I includes receipts showing that Applicant has made one payment of \$75 and 10 payments of \$100 on this debt, from October 2008 through September 2009. The receipts do not show how much is still owed on this debt.

1.i. This overdue debt is cited in the SOR in the amount of \$692. Applicant testified that he plans to contact the creditor for this credit card debt and work out a payment arrangement. However, at this time, this debt has not been paid or reduced (Tr at 47).

1.j. This overdue debt is cited in the SOR in the amount of \$11,000. Applicant testified that this credit card debt has not been paid or reduced (Tr at 48-50).

1.k. This overdue debt is cited in the SOR in the amount of \$16,000. Applicant testified that this credit card debt has not been paid or reduced (Tr at 48-50).

Applicant testified that his financial difficulties occurred as a result of entering into a business arrangement with his girlfriend at the time of the business arrangement, in which he loaned her money as a business investment in five different business projects, including purchasing and reselling houses, securing mortgage loans, advertising and reestablishing credit. He alleged that she used the money for a number of purposes other than the businesses. He continued to loan her money after they broke up and despite the fact that the businesses did not seem to be successful. He stated that he ultimately plans to pursue in court any assets that she may have, although he conceded that he does not know what, if anything, he might recover (Tr at 51-54).

Applicant also explained that much of his credit card debt was used to purchase down payments on two houses that he purchased with his girlfriend, and to make payments on them while she was refurbishing them (Tr at 60-61). Applicant did not have

an estimate as to the amount of money that he invested in the businesses with his girlfriend.

Mitigation

Applicant submitted two positive character letters in Exhibits B and C. The first letter was from his supervisor, dated October 13, 2009, which stated that “I consider [Applicant] a highly responsible co-worker who initiated several financial endeavors that did not turn out well . . . But he has worked diligently to correct those situations.” The second letter, from a Vice President of his employer stated, “I believe [Appellant] has displayed sound integrity and ethical behavior in doing his job and protecting sensitive information.”

Applicant also submitted Performance Appraisals for years 2003, 2004, 2005, 2008 and 2009 (Exhibits D through H). They were all quite positive, and in years 2008 and 2009, his overall score was a 4.0 out of 5.0.

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 has been unable to pay or resolve most of his obligations for several years. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

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 investments in the businesses with his former girlfriend. However, the evidence is clear that he made extremely poor business choices by continuing to borrow on his credit cards to make

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