



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



In the matter of:)	
)	
)	ISCR Case No. 09-03656
)	
)	
Applicant for Security Clearance)	

Appearances

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

January 19, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On February 24, 2010, 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 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 March 17, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on August 18, 2010. DOHA issued a notice of hearing on October 29, 2010, and the hearing was convened as scheduled on November 24, 2010. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through I at the time of hearing. I granted Applicant's request to keep the record open until December 8, 2010, to submit an additional document, which was received, identified as Exhibit J, and entered into

evidence without objection. DOHA received the transcript of the hearing (Tr) on December 10, 2010. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and his witness, 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 upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 50 years old. He is currently unmarried, but was married from 1981 to 1991, and he has one daughter. He served in the United States Air Force from 1979 to 1994, when he retired as a Master Sergeant. Applicant seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 10 allegations (1.a. through 1.j.) regarding financial difficulties under Adjudicative Guideline F. 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 in the amount of \$2,361 for a judgement filed against him in December 2006. At the hearing, Applicant testified that at the time this judgement was entered, he had been deployed outside the United States, and he had never received the subpoena or notice of the trial for this debt. He first learned of the judgement when he reviewed his credit report in 2008. He averred that he now has an attorney who tried to resolve this out of court, but ultimately he filed an appeal to have the decision set aside. Applicant testified that he had a court date on December 10, 2010 to set this verdict aside. (Tr at 34-39.)

Applicant indicated that he is willing to pay the amounts of the judgements listed on 1.a., 1.c. and 1.d., as that is the amount he owes, but the law firm representing the creditors is seeking many thousands more than the amount of the judgements. Since he was not given the opportunity to represent himself in court, he is now seeking to have the judgements set aside. (Tr at 43-46, 69-70.)

1.b. This overdue debt is cited in the SOR in the amount of \$2,723. Applicant testified that several of the debts listed on the SOR were not his debts. On September 17, 2008, he engaged the services of a law firm to dispute these debts. (Exhibit I.) he paid the firm \$59 a month for many months until the only three debts still listed on his credit reports were the judgements that he planned to challenge with a different law firm. (TR at 41-42.) As a result of letters sent by the law firm challenging these debts, many of them were dropped from his credit report. He averred that this debt has now been removed from his credit report. (Tr at 39-42.) While this debt was listed on Exhibit 6, the credit report dated December 18, 2009, it is not listed on the two most recent credit reports, dated May 10, 2010, and November 17, 2010. (Exhibits 7 and 8.) I find this debt has been resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$1,433 for a judgement filed against him in January 2007. Applicant testified that at the time this judgement was entered, he was deployed outside the United States, and he had never received the subpoena or notice of the trial for this debt. Applicant testified that his attorney will represent him in court on December 9, 2010, to set this verdict aside.

1.d. This overdue debt is cited in the SOR in the amount of \$1,874 for a judgement filed against him in May 2007. Applicant testified that when this judgement was entered, he was deployed outside the United States, and he had never received the subpoena or notice of the trial for this debt. Applicant testified that his attorney will represent him in court on December 29, 2010, to set this verdict aside. (Tr at 46.)

1.e. This overdue debt is cited in the SOR in the amount of \$2,317. Applicant testified that this debt is for the same original debt as 1.a., above, and as a result of his law firm challenging this debt, it was dropped from his credit report. (Tr at 47-50.) While a debt to this creditor was listed on Exhibits 6 through 8, it is not for the amount listed on the SOR, nor does it show that it is overdue. I find this debt has been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$83. Applicant testified that he paid \$110.66 on July 1, 2009, to resolve this debt. A receipt attached to his RSOR shows this debt has been resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$2,317. Applicant testified that this debt is for the same original debt as 1.a., above, also listed as 1.e., above, and as a result of his law firm challenging this debt, it was dropped from his credit report. (Tr at 51-52.) This debt is not listed on any of the most recent credit reports. (Exhibits 6 through 8.) I find this debt has been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$2,758. Applicant testified that this debt is for the same original debt as 1.d., above, since this creditor bank purchased the bank that is listed as the creditor in 1.d. As a result of his law firm challenging this debt, it was dropped from his credit report. (Tr at 52.) This debt is not listed on any of the most recent credit reports. (Exhibits 6 through 8.) I find this debt has been resolved.

1.i. This overdue debt is cited in the SOR in the amount of \$235. Applicant testified that he was not aware of the origin of this debt, and despite his efforts he could not locate the creditor of this debt. As a result of his law firm challenging this debt, it was dropped from his credit report. (Tr at 53.) This debt is not listed on any of the most recent credit reports. (Exhibits 6 through 8.) I find this debt has been resolved.

1.j. This overdue debt is cited in the SOR in the amount of \$147. Applicant testified that he was not aware of the origin of this debt, and despite his efforts he could not locate the creditor of this debt. As a result of his law firm challenging this debt, it was dropped from his credit report. (Tr at 54.) This debt is not listed on any of the most recent credit reports. (Exhibits 6 through 8.) I find this debt has been resolved.

Applicant provided reasons for his financial difficulties. He testified that as a single father he continued to support his daughter, including paying for her medical care in the face of three instances of his daughter losing her baby while pregnant. He also paid for her housing and schooling. Additionally, he continued to support his ex-wife after they were divorced, and her child, who was not related to him. (Tr at 80-85.)

Paragraph 2 Guideline E, Personal Conduct

Applicant executed a Security Clearance Application (SCA) on September 16, 2008. (Exhibit 1.) The SOR alleges that Applicant failed to provide truthful and candid answers to Questions 27 and 28. They will be reviewed in the same order as they were addressed in the SOR:

2.a. Question 27 d. of the SCA asks, "In the last 7 years have you had any judgements against you that have not been paid?" Applicant answered "No" to this question subsection. It is alleged in the SOR that he failed to disclose that he had judgements against him that had not been paid, as set forth in paragraphs 1.a., 1.c., and 1.d., as reviewed above.

Applicant testified that he first viewed his credit report three hours before he completed his SCA, and while he did see the judgements listed on the report, he had never been aware of them since he was never served, as has been reviewed above, so he was not sure if the information was accurate. He stated that since he was set to deploy shortly, he did not have time to check if the information about his judgements was correct. Finally, Applicant testified that he had been working for 12 hours at the time he completed the SCA, and he was told it had to be finished that night, so he did not take the time to determine what was correct. (Tr at 54-59.)

2.b. Question 28 a. of the SCA asks, "In the last 7 years have you been over 180 days delinquent on any debts(s)?" Applicant answered "No" to this question subsection. It is alleged in the SOR that he failed to disclose that he has been delinquent on the accounts set forth in subparagraphs 1.a. through 1.j., above.

2.c. Question 28 b. of the SCA asks, "Are you currently over 90 days delinquent on any debts(s)?" Applicant answered "No" to this question subsection. It is alleged in the SOR that he failed to disclose that at the time he completed the SCA, he was over 90 days delinquent on the accounts set forth in subparagraphs 1.a. through 1.j., above.

Applicant testified that when he first viewed his credit report three hours before he completed his SCA, he saw debts listed that he did not believe were correct, both because some appeared to be duplicates and because he knew he had resolved some of them. (Tr at 58-59.)

Applicant wrote the following on the SCA under "Your Financial Delinquencies" Additional Comments:

I answered no to this question because I was not sure if the loans that were closed out on my credit report as charge offs were considered delinquent as they show close out several years ago. There are other items that are showing balances much greater than the actual balance, for instance my [charge] card has an actual balance of \$47 as of 01 September 08 and shows past due on my credit report of \$938. I am using a consumer credit agency to challenge these items on my report. I have a Beacon score of 622 from Equifax and they will be addressing the items on my creditor report and using [a law firm], an online service that handle [sic] the debts that are still owed.

Applicant testified that by including this information under Additional Comments, he was giving notice to the Government that he had some debts on his credit report. (Tr at 64.) He also noted that he had applied for security clearances before, and he believed that an investigation would be held which would show the amounts owed on the credit reports, so he was not attempting to mislead the Government, nor did he think it would be possible to do so. (Tr at 72-76.)

Mitigation

Applicant submitted 12 extremely positive character letters from a variety of individuals who have known him in his professional and personal capacities. (Exhibit B.) The letters included one from a Major in the United States Army, who had overseen Applicant as part of his command, and described Applicant as the following: "He is absolutely professional, trustworthy, displays a superior level of technical competence in all areas of maintenance, and always puts the needs of others ahead of himself to ensure mission success. . . He is an asset to any company fortunate to have him and it is my privilege to write this letter on his behalf." An Operations Officer in the United States Army wrote, "[Applicant] is a leader, mentor and consummate team player who can always motivate those he works with."

Applicant's daughter and ex-wife also wrote very laudatory letters, confirming that Applicant had not only supported his daughter, especially during her medical difficulties, but he also financially helped his ex-wife and her other daughter, even when he was not required to do so.

Exhibit B also included a Certificate of Excellence that Applicant received for his outstanding service to the United States Army Air Transport Pacific Flight Detachment from March 19, 2006, to July 2, 2006. Exhibit C includes many certificates and other records of training, establishing that Applicant has continually worked to improve his employment capability.

Applicant also introduced his DD 214 confirming that he retired with an Honorable Discharge as a Master Sargent in October 1994, as part of a Reduction In Force. Among the awards he received were: Meritorious Service Medal, Air Force Commendation Medal with two Oak Leaf Clusters, Air Force Longevity Service Award Ribbon, Air Force Achievement Medal, and the National Defense Service Medal. (Exhibit D.) Applicant also submitted the ratings he received during his career in the Air

Force from 1979 to 1992. The rating were always Excellent, most of them of the very highest rating possible. He was described as having “outstanding leadership, job knowledge, dedication, and professional skill” and “diligent efforts and unselfish attitude [that was] an inspiration.” Finally it was written about Applicant, “he has the technical knowledge and the self-motivation to go to the top.” (Exhibit D.)

Exhibit E includes a letter from Applicant’s attorney, confirming that he is representing Applicant regarding the three judgements that have been reviewed above as 1.a., 1.c., and 1.d. A copy of a payment of \$1,500 made by Applicant to a second attorney representing him for these judgements was also included in Exhibit E.

Exhibit I includes letters from creditors establishing that Applicant has resolved four additional debts over the last three years.

Finally, Applicant also submitted a Personal Financial Statement that showed his monthly income is \$4,785, with his monthly expenses \$3,533, leaving a monthly net remainder of \$1,252. (Exhibit J.)

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 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 “[any] 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 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 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 in part from the support of his daughter, especially during her medical problems. Also, the judgements all were

entered at a time when he was deployed outside of the United States, and he never received notice.

I find that Applicant has acted responsibly to resolve his debts. First, he engaged the services of one law firm to help him contact and try to resolve those debts that were legitimate, and to dispute those debts that were not. Thereafter, he engaged the services of another law firm to set aside the judgements entered against him because he never received notice of the trials for any of these debts. At the time of the hearing, he had court dates approaching when he would be attempting to have the judgements set aside. Therefore, I find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is also 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 significantly reduced or resolved his overdue debt, and he has shown that he can maintain financial stability. Therefore, he has mitigated the financial concerns of the Government.

Guideline E, Personal Conduct

With respect to Guideline E, I find it credible that Applicant only became aware of the judgements and the extent of his overdue debts when he reviewed his credit report shortly before he completed his SCA. I also considered the following: he had already worked 12 hours on the day he completed the SCA and he was preparing to deploy shortly, he was trying to complete the SCA in one day as he was instructed, since he had been totally unaware of the judgements and the debts were completely different from what he understood, he was legitimately confused, and finally and most significantly, that he did inform the Government in his Additional Comments section of the SCA that he had debts but he was not certain of their status. Because of all of these factors, together with Applicant’s testimony that he had applied for security clearances before and he believed that a background investigation would review his credit report and other financial information, I find that Applicant did not intend to mislead the Government regarding his financial situation.

In reviewing the disqualifying conditions under Guideline E, I conclude that there was no “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” by Applicant. Therefore, I find that neither ¶ 16 (a), nor any other disqualifying condition, applies against Applicant. I resolve Guideline E 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 Guidelines F and E, considered with his outstanding years of military service and the extremely positive character letters written on his behalf, 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:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a., through 1.j.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. through 2.c.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge