



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-11163
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

April 27, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On June 25, 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 26, 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 6, which were received without objection. Applicant testified on his own behalf and submitted four exhibits at the time of hearing, which was also admitted without objection. (Exhibits A through D.) I granted Applicant's request to keep the record open until October 29, 2009, to submit additional documents. He timely

submitted eight additional documents, which have been entered into evidence without objection as Exhibits E through L. DOHA received the transcript of the hearing (Tr) on October 30, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, 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 following findings of fact:

Applicant is 56 years old. He is married and has no children. Applicant served in the United States Navy from 1974 to 1996, and he received an Honorable Discharge. He 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 eight allegations (1.a. through 1.h.) regarding financial difficulties under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed in the SOR:

1.a. Applicant filed for a Chapter 13 Bankruptcy in April 2009 at the United States Bankruptcy Court. Exhibit A consists of the bankruptcy Schedule F, showing the unsecured creditors included in the bankruptcy and the amount owed to each one. The total amount owed in Schedule F is \$154,676. Applicant testified that under this Chapter 13 bankruptcy he is required to make payments to a Chapter 13 trustee. (Tr at 48-49) Exhibit D includes receipts showing that by the time of the hearing, Applicant had made, as scheduled, six payments of \$1,383, for the months of April 2009 to October 2009. All of his debts are scheduled to be resolved in the bankruptcy in three years. (Tr at 53)

1.b. This overdue debt is cited in the SOR in the amount of \$6,651. Applicant testified that this debt is included in his bankruptcy Schedule F as creditor 14. (Tr at 55-56) Exhibit E also confirms that this debt is listed as both creditors 14 and 2 under Schedule F.

1.c. This overdue debt is cited in the SOR in the amount of \$11,149. Applicant testified that this debt is included in his bankruptcy Schedule F as creditor 1. (Tr at 58-59) Exhibits E also confirms that this debt is listed as creditors 1 under Schedule F.

1.d. This overdue debt is cited in the SOR in the amount of \$10,208. Applicant testified that this debt is included in his bankruptcy Schedule F as creditor 10. (Tr at 59-60) Exhibit E also confirms that this debt is listed as creditor 10 under Schedule F.

1.e. This overdue debt is cited in the SOR in the amount of \$15,039. Applicant testified that this debt is included in his bankruptcy Schedule F as creditor 15. (Tr at 62-64) Exhibit E also confirms that this debt is listed as both creditors 15 and 2 under Schedule F.

1.f. This overdue debt is cited in the SOR in the amount of \$14,948. Applicant testified, and the evidence confirms, that this debt is the same as 1.e., above. (Tr at 62)

1.g. This overdue debt is cited in the SOR in the amount of \$17,271. Applicant testified that this debt is included in his bankruptcy Schedule F as creditor 11. (Tr at 64-65) Exhibit E also confirms that this debt is listed as creditor 11 under Schedule F.

1.h. This overdue debt is cited in the SOR in the amount of \$7,553. Applicant testified that this debt is included in his bankruptcy Schedule F as creditor 14. (Tr at 68-69) Exhibit E also confirms that this debt is listed as creditor 7 under Schedule F.

At the time of the hearing, Applicant was working full time and also had a part time job to make certain that he could pay all of his recent debts and continue to pay the bankruptcy trustee. Neither he nor his wife has any credit cards at this time, and he reviews all of his current debts with his wife to make sure they are all being resolved in a timely manner.

Applicant testified that his debts became overdue for the following reasons: After he retired from the Navy he was unemployed for one year. After he started working and earning a significant wage, his wife made a decision to stop working, and unbeknownst to Applicant, she withdrew money from her 401k account, which caused a penalty to be owed to the IRS. After a period of employment, he was terminated because of a disagreement with his employer. For the years between 2002 and 2007, he went through periods of unemployment or underemployment. (Tr at 34-46) Specifically from October 2006 through May 2007, Applicant was unemployed. (Tr at 70-71)

Mitigation

Applicant submitted three very positive character letters (Exhibit G). The Department Manager for his current employer, who was a member of the United States Air Force for 24 years, wrote that Applicant "is a mature and level headed individual. . . I have never had to question his integrity, dedication to the job, or his loyalty to our country." The Branch Manager wrote, "I have full confidence in [Applicant's] discretion and integrity in dealing with classified information. [Applicant] held a Secret clearance for 21 years while on active duty with the United States Navy." Additionally, he added, "I consider [Applicant] a very trustworthy, dependable, and stable man and would not hesitate to entrust him with personal information I desired to be held in confidence."

Applicant also submitted Performance Evaluation Reports (PE) received during his service in the Navy for the period from 1982 through 1995, which were all excellent (Exhibit K). In his final PE, his Commanding Officer stated that Applicant "demonstrated, balanced, desired and truly exceptional qualities of leadership, military behavior and personal integrity. Met every challenge head-on with impressive results. Has my STRONGEST RECOMMENDATION for advancement." (Emphasis in original.)

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 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. 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 satisfy many of his obligations for a significant period of time. 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 were in large part the result of his unemployment or underemployment for several years after he left the Navy. Applicant has acted responsibly to resolve all of these overdue debts, by employing the services of an attorney to file for bankruptcy. Additionally, since this is a Chapter 13 bankruptcy, Applicant's is required to make payment each month to satisfy this bankruptcy. At the time of the hearing, Applicant had already made 6 months of payments in the amount of \$1,383 each. Therefore, I find that this mitigating condition is a significant factor for consideration in this case.

I also find AG ¶ 20 (d) is applicable since Applicant has made a good-faith effort to resolve all of his overdue debts through bankruptcy. Based on Applicant's overall conduct, I conclude that he has mitigated the financial concerns of the Government.

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 how Applicant has made a good-faith effort to resolve his overdue debts, together with Applicant's excellent military career, and the positive character letters and evaluations he has received, I find that the record evidence leaves me with no 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.-1.h.: 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