



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-11184
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

July 27, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On March 10, 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 March 31, 2009, Applicant replied to the SOR (RSOR) in writing, and requested a hearing before an Administrative Judge. I received the case assignment on April 16, 2009. DOHA issued a notice of hearing on April 22, 2009, and I convened the hearing as scheduled on June 3, 2009, in La Vegas, Nevada. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through G at the time of hearing, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on June 10, 2009. I granted Applicant's request to keep the record open until June 17, 2009, to

submit additional documents. He timely submitted additional documents, which have been identified and entered into evidence collectively as Exhibit H, and the record closed on June 17, 2009. 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 all of the SOR allegations, with the exception of 1.b., 1.d., 1.m., and 1.o., which he denied. 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 54 years old. He is currently married and has four children. He has received a Bachelor's degrees. He served in the United States Air Force from 1973 to 1997, when he received an Honorable Discharge.

Applicant was employed by a defense contractor, although he is not currently employed by that company, but he seeks a DoD security clearance in connection with his employment in the defense sector.

The SOR lists 15 allegations (1.a. through 1.o.) regarding financial difficulties under Adjudicative Guideline F, for overdue debts. The debts 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 \$956. While in his RSOR, Applicant admitted this allegation, during his testimony he alleged that he was disputing this debt for a dental bill, because he had informed the dentist only to proceed with the procedure if it was covered under his dental insurance. The dentist had informed him he was insured, and after he received the treatment, he learned that his insurance would not pay for this bill.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$137. Applicant testified that this debt, also for a bill from the same dentist as 1.a., has been paid. Exhibit 6, the most current credit report submitted by the Government, shows that this debt has been paid.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$4,169. Applicant testified that this debt is being paid in the amount of \$176.01 per month, which is deducted automatically, and which he has paid for almost one year. Exhibit F establishes that payments are made monthly on this debt.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$139. Applicant testified that he believed this debt, for a phone for his wife, had been paid. However, no evidenced was introduced to establish if this debt has been resolved.

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$2,030, with a total balance of \$16,097. Applicant testified that this debt for a credit card is being paid in the amount of \$291 a month for more than a year. Exhibit G shows that Applicant made payments for the months of April and May 2009, in that amount. Exhibit H shows that payments have been made at least from November 2008 through May 2009, and the amount now owed is \$14,983.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$4,679, with a total balance of \$48,543. Applicant testified that he has been in contact with the creditor for a second mortgage for a rental property that he owns, and he is still waiting for a loan modification. At this point he remains overdue on the entire debt. Applicant testified that in the last five years he has purchased 16 investment properties that he planned to rent out. There are only two properties that still remain in his possession. The other 14 have all been lost in foreclosure. He still owns this property at this time.

1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$7,824, with a total balance of \$74,000. Applicant testified that he has been in contact with the creditor for this second mortgage for another rental property that he owns, and he is still waiting for a loan modification. At this point he remains overdue on the entire debt, and this is the other property that he still owns.

1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$5,565, with a total balance of \$179,000. This debt, for property that was lost in foreclosure, is still owed.

1.i. This overdue debt to Creditor 9 is cited in the SOR in the amount of \$4,045, with a total balance of \$127,000. This debt, for property that was lost in foreclosure, is still owed.

1.j. This overdue debt to Creditor 10 is cited in the SOR in the amount of \$51,213. This debt, for property that was lost in foreclosure, is still owed.

1.k. This overdue debt to Creditor 11 is cited in the SOR in the amount of \$13,177, with a total balance of \$121,000. This debt, for property that was lost in foreclosure, is still owed.

1.l. This overdue debt to Creditor 12 is cited in the SOR in the amount of \$205,294. This debt, for property that was lost in foreclosure, is still owed.

1.m. This overdue debt to Creditor 13 is cited in the SOR in the amount of \$512,213. Applicant was not certain as to the origin of this debt, but upon review it appears that this is the same debt as that listed as 1.j., above, and the correct amount owed is \$51,213.

1.n. This overdue debt to Creditor 14 is cited in the SOR in the amount of \$117,382. This debt, for property that was lost in foreclosure, is still owed.

1.o. This overdue debt to Creditor 15 is cited in the SOR in the amount of \$207. Applicant testified that he has been disputing this debt for a trash collection bill, because he did not own the property at the time that the services were performed.

Applicant testified that his financial difficulties occurred primarily because his wife's mother and aunt both became ill with cancer and ultimately died. During the period when they were ill, both Applicant and his wife were spending a great deal of time taking care of them, leaving them less time to manage their properties.

There were several other reasons for Applicant's financial difficulties. Applicant conceded that he was not the best manager, as he was "too nice," not filing eviction proceedings against tenants when they failed to pay their rent. Applicant also estimated that the property values are 50 percent below what they had been two years ago. Finally, Applicant purchased most of the properties in a poor section of the city, and if they were vacant, they often became vandalized, and they could not be rented without considerable expenditures for repairs.

At this point, Applicant has consulted with several attorneys to determine if it would be best for him to file for bankruptcy, and what would be the most appropriate chapter to file.

Mitigation

Applicant submitted several positive documents in Exhibit H including: a letter from his former employer, dated June 15, 2009, explaining that Applicant's work was satisfactory, and the only reason for his termination was because he did not currently hold a security clearance. He also submitted a number of extremely laudatory Senior Enlisted Performance Reports that he received during his service in the Air Force. Finally, he offered citations for service medals that he received.

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 most of his obligations for a 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 argued that his financial problems were primarily the result of the illnesses of his wife's mother and aunt. However, there were other reasons that contributed to his overdue debts, including his poor ability as a property manager, and the poor choices of where to purchase the property. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case.

Applicant has not resolved most of his very significant overdue debt. I conclude that until he is able to significantly reduce this overdue debt, he has not 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) 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 Disqualifying Conditions apply and why no Mitigating Condition applies, I find that the record evidence leaves me with significant 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 not 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:	AGAINST APPLICANT
Subparagraphs 1.a., 1.c. through 1.l, 1.n., and 1.o.:	Against Applicant
Subparagraphs 1.b. and 1.m.:	For 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