



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-11741
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

September 21, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On July 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 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 August 28, 2009, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on September 18, 2009. DOHA first issued a notice of hearing on November 16, 2009, and the hearing was first convened on December 17, 2009. The hearing was not concluded on the first day of hearing, and a second day of hearing was required. DOHA issued a notice of hearing on December 18, 2009, and the second day

of hearing was scheduled to be heard on January 21, 2010. Because of calendar conflicts, DOHA issued a second notice of hearing on January 14, 2010, for the second day of hearing, and the second day of hearing was scheduled to be heard on February 4, 2010. On February 3, 2010, because of personal issues, the second hearing day was cancelled and taken off calendar. DOHA issued a fourth notice of hearing on March 2, 2010, and the hearing was scheduled to be heard on March 18, 2010. DOHA issued a fifth notice of hearing on March 16, 2010, and I convened the second day of hearing on April 12, 2010.

The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through I at the time of the first hearing, which were also admitted without objection. After the second day of hearing, I granted Applicant's request to keep the record open until April 19, 2010 to submit additional documents. He timely submitted several additional documents at the second day of hearing, which have been identified and entered into evidence as Exhibits J through L. He also submitted a number of documents post hearing second day that have been identified and entered into evidence collectively as Exhibit M. DOHA received the transcript for the first day of the hearing (Tr) on January 4, 2010, and the transcript for the second day of the hearing on April 21, 2010. Based upon a review of the case file, pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Findings of Fact

In his RSOR, Applicant denied all of the SOR allegations. 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 40 years old. He is unmarried, but was married from 1990 through 1997, and he has two children with his ex-wife, two other children from a previous relationship and a fifth child, for whom the court has ordered him to pay child support. He was in the United States Navy from 1986 to 1997, and he received an Honorable Discharge. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists five allegations (1.a. through 1.e.) regarding financial difficulties under Adjudicative Guideline F. All of 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 \$4,654. At the hearing, Applicant testified that this debt was for a student loan, as was 1.b. (Tr at 30.) He stated that both of these loans had been in default, but he had been making payments of \$150 month for approximately one year with a total amount of \$2,000, and the loan had been removed from the default category. Exhibit F, which is a letter from

the Settlement Unit for the college funds owed by Applicant, dated October 28, 2009, indicated that Applicant's two education loans were rehabilitated and are no longer in default. Applicant now pays \$70 a month on these two loans per the agreement, since he has now rehabilitated the loans. (Tr at 36-38.)

1.b. This overdue debt is cited in the SOR in the amount of \$5,510. Applicant testified that this debt, also for a student loan, has also been removed from the default category, as reviewed in 1.a., above. Exhibit F confirms that this debt has been rehabilitated.

1.c. This overdue debt is cited in the SOR in the amount of \$4,200. Applicant testified that this loan is for child support, which he has been paying in various amounts. (Exhibit 3.) He averred that he was ordered to make payments for a child of whom he had not been aware, and he is still not certain of the paternity. He indicated that he was in arrears because the court had ordered him to make child support payments, but he had not received notice of the order for several years. When he went to renew his license in another state in 2007, that was when he learned of this debt. His wages are now being garnished to make payments on this debt.

Applicant testified that he has never been arrears for child support with the two children he had with his ex-wife. However, he also was paying child support for a child born out of wedlock, and he testified that he was in arrears for the child support of one of these children. (Tr at 78-83.)

1.d. This overdue debt is cited in the SOR in the amount of \$4,642. Applicant testified that this debt is the same as 1.a., above. (Tr at 41-42.) He pointed to Exhibit F, the letter from the Settlement Unit for the college funds, which refers to two student loans, not the three, as are listed on the SOR. He also testified that he had only taken out two education loans. (Tr at 62.) I find that this debt is a duplicate of 1.a., above.

1e. This overdue debt is cited in the SOR in the amount of \$294. Applicant testified that he is unaware of the origin of this debt, and since it is not listed on his credit report, he is unable to contact a creditor to inquire as to its origin. He is willing and able to pay this debt, and has actually purchased a money order in the amount of \$294 to pay this debt but he cannot locate the creditor, so he is unable to do so. (Tr at 56-58.)

Applicant testified that he got into financial difficulty after his sister died on 2002, as she had four children, his nephew and three nieces, for whom he took responsibility after her death. He also had his own business as a mechanic from August 2001 through August 2006, and he indicated that, at times, the business was not very lucrative. He then became unemployed, so he decided to return to school, and he received a certificate in power plant maintenance, jet engines and reciprocating engines. (Tr at 39-46.) This led to his education loan problems, as discussed above.

During the first day of hearing, based on new information elicited at the hearing by the cross examination of Applicant, Department Counsel moved to amend the SOR,

and add additional allegations. The following are the two new allegations which were added to the SOR:

1.f. "You failed to file your Federal and State income tax returns for tax year 2008."

1.g. "During the approximate period of August 2001 to August 2006, you failed to report your full income to the Federal Government."

After the SOR was amended, at the request of Applicant, the hearing was continued to give Applicant an opportunity to respond to the new allegations. As discussed above, the second day of hearing convened on April 12, 2010.

At the second day of hearing Applicant submitted documents partially showing he had finally filed tax returns for tax years 2001 through 2009 on February 5, 2010. (Exhibits K and L.) He testified that he had not previously filed tax returns for those years because he thought he could file the tax returns at a later date. He was not aware they were due on a specific date. (Tr at 44-47.)

Mitigation

Applicant submitted documents confirming his Honorable Discharge from the Navy on August 1997, and the receipt of several awards and letters of commendation, during his service. (Exhibit M.)

Applicant submitted a positive character letter in Exhibit E from his manager for his current employer. He was described as someone who is an "extremely trust worthy, (*sic*) ethical and dedicated employee who can be trusted to perform at the highest expectation." Applicant also submitted five additional character letters from individuals that have known him in his employment capacity. All of them were extremely positive and laudatory. In one letter from one of his managers, it states, "His professionalism, motivation, and work ethics have always been above reproach." (Exhibit M.)

Finally, Applicant submitted post hearing copies of his full Federal and state tax returns for years 2001 through 2009. (Exhibit M.) Based on the limited income made by Applicant for these years, the returns showed that Applicant did not owe any Federal or state tax for any of these years.

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 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 debts.

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 period when he was unemployed or received reduced income. He also took on the responsibility of taking care of the four children of his sister after her death. Applicant has made a legitimate and good-faith effort towards making payments on his two student loans and bringing them out of default mode, he is paying on his child support arrearage, which occurred because he was not aware of the order of the court for him to make payments. I find that Applicant has acted responsibly. Therefore, I find that this mitigating condition is a factor for consideration in this case.

Regarding the failure to file tax returns for tax years 2001 through 2008, Applicant did violate the law by failing to file tax returns, even if he was unaware of his duty to do so. However, Applicant has attempted to mitigate the clear legal violation by finally filing returns for those years, and since no money had been owed to the Federal or state Governments for those years, this issue is not adverse under Financial Concerns. Therefore, I conclude that Applicant has mitigated the Financial Concerns of the Government.

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