



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-12013
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

September 21, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On March 20, 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 April 11, 2009, Applicant replied to the SOR (RSOR) in writing, and requested a hearing before an Administrative Judge. I received the case assignment on April 23, 2009. DOHA issued a notice of hearing on June 10, 2009, and I convened the hearing as scheduled on August 13, 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 J, which were also admitted without objection. Applicant had one additional witness, his wife, testify on his behalf. DOHA received the transcript of the hearing (Tr) on August 20, 2009. Based upon a review of

the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Guideline F, Financial Considerations

In his RSOR, Applicant admitted all of the SOR allegations; 1.a. through 1.g. 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 his wife, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 50 years old. He is married and has two children. Applicant 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 7 allegations (1.a. through 1.g.) 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 \$867, with an approximate balance of \$6,308. During his testimony, Applicant initially alleged that he was paying \$300 to \$400 a month on this debt and he was not sure the current amount now owed (Tr at 29-31). When his wife, who had better knowledge of the status of their debts, testified, she indicated that they had not made any payment on this debt, as the interest rate had risen to 30% (Tr at 59-60).

1.b. This second overdue debt to Creditor 1 is cited in the SOR in the amount of \$292, with an approximate balance of \$2,116. Applicant's wife also testified that this debt had not been paid (Tr at 59-60).

1.c. This third overdue debt to Creditor 1 is cited in the SOR in the amount of \$1,206, with an approximate balance of \$7,383. Applicant's wife testified that this debt had not been paid either (Tr at 59-60).

1.d. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$1,035, with an approximate balance of \$6,870. Applicant's wife testified that this debt had not been paid, as the interest rate has risen to 27% (Tr at 62).

1.e. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$169, with an approximate balance of \$4,435. Applicant's wife testified that they were only two or three months behind on this debt (Tr at 62).

1.f. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$5,966, with a total balance of \$172,572. Applicant testified that this debt is for a mortgage for

an investment property that he owned, and which has now been foreclosed. He still owes the entire amount stated in the SOR (Tr at 37).

1.g. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$100,172. Applicant testified that this debt is for a mortgage for another investment property that he owned, and which has also been foreclosed. He still owes the entire amount stated in the SOR (Tr at 37-38).

Applicant testified that his financial difficulties began primarily after 2001, when his income increased to six figures, and he bought investment properties, and as he described “toys” such as motorcycles and an RV (Tr at 39). In May 2008, he lost the employment that had given him the income. Additionally, the deaths of his mother and his wife’s mother caused further financial difficulties. Finally, his wife was in an automobile accident that further damaged their finances, and the renters of their investment properties stopped making payments. He testified that before May of 2008, he was current on all of his bills (Tr at 42). At one point, Applicant owned five investment properties, but he now only owns one. Two of the foreclosed properties were listed on the SOR as 1.f., and 1.g., and the other two properties, not listed on the SOR, have also now gone into foreclosure. He testified that the mortgages on those were approximately \$110,000 on one, and \$80,000 or \$90,000 on the other one (Tr at 54).

Applicant testified that, at this point, he is considering filing bankruptcy, but thus far he has not gone forward with bankruptcy proceedings, because he did not want it to hurt his potential to receive a security clearance (Tr at 45-47). He and his wife have tried to increase their income and to reduce their expenses. He also did consult a credit counselor, but they could not help Applicant (Tr at 49-50) (Exhibit D). Finally, Applicant testified that he is up to date with his other current bills (Tr at 52-53).

Mitigation

Applicant submitted several positive documents including: a letter from a friend and associate of Applicant, who described him as “reliable, trustworthy and of the highest character” (Exhibit G), a Certificate of Appreciation for Applicant for his “dedication, guidance and assistance” from his current employer (Exhibit I), and a Performance Evaluation for July 2008 to July 2009 (Exhibit J) from his current employer, with an overall rating of 3.3.out of 4.

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 has been unable to pay his obligations for a considerable period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

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’s financial problems were largely because of his loss of employment. However, there were other reasons that contributed to his overdue debts, including his overspending on many items, and the inability to manage or sell his investment property. He also has been unable to make any serious attempt to resolve his overdue debts. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case.

Applicant has not resolved his very significant debt. I conclude that until he is able to significantly reduce this debt, and establish a more stable financial picture, 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) 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 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

