



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-12029
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

June 17, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On June 16, 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 July 10, 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 August 5, 2009. DOHA initially issued a notice of hearing on September 1, 2009, and the hearing was scheduled for September 25, 2009. Because Applicant was not available, the hearing had to be continued. DOHA issued a second notice of hearing on October 21, 2009, and I convened the hearing as scheduled on December 30, 2009, in Las Vegas, Nevada.

At the hearing, Department Counsel offered Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through K, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on January 7, 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

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 43 years old. He is currently married, and he was married three previous times. Applicant served in the United States Air Force from February 1986 to April 2006, and he held a security clearance for the entire span of his military career. Applicant is seeking employment with a defense contractor, and he has applied for a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 5 allegations (1.a. through 1.e.) 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 \$206. Applicant testified that this debt was from a collection agency for a credit union in which he maintained a checking account. Since he was not using the account, he was not aware that this debt had been accumulating fees. He claimed that he called the creditor and told them he was not aware he was receiving charges for this account. They told him they would send him some paperwork to resolve this debt, which he never received. He testified that he was later informed that this creditor no longer has a record of this debt, and it has dropped off his credit report. (Tr at 49-50.)

1.b. This overdue debt is cited in the SOR in the amount of \$12,459. Applicant testified that this debt was incurred on a second mortgage, when his ex-wife and her husband at the time purchased a home. According to Applicant this home purchase occurred before he was married to this woman, and he does not know why his name is on this debt. (Tr at 39-45.) Applicant was married to this woman from March 1999 through September 3, 2009. (Exhibit H.) He disputed this debt in a letter that he sent to this creditor on December 11, 2009, in which he explained that this debt is not his, and the account should be removed from his credit report. (Exhibit B.) Applicant also sent letters to all three credit reporting service, disputing this debt (Exhibits C, D, E), and he received a letter from Equifax, telling him that this debt was no longer on the Equifax credit file. (Exhibit E.) Exhibit A, a credit report dated December 29, 2009, seems to list this debt several times, but in each listing it shows the amount owed as \$0. Applicant

also testified that he has called this creditor and he was informed that they do not have information about him in regards to this debt. (Tr at 69-73.)

1.c. This overdue debt is cited in the SOR in the amount of \$45,600. Applicant testified that this debt was also incurred by his former wife before he was married to her. He claimed that it was listed on Exhibit A and showed that this debt has a \$0 balance. (Tr at 45-47.) This debt is listed in Exhibit 3, the full data credit report, dated October 9, 2008, although it shows that it is being disputed. However, it is not listed on the more recent credit report, Exhibit 4, the Government's credit report dated May 27, 2009, nor is it listed on Exhibit A, the credit report dated December 29, 2009. Exhibit C includes a letter from one of the credit reporting agencies showing that, after investigating Applicant's dispute of this debt, it is to be deleted from their future credit reports. Therefore, Applicant has successfully disputed this debt.

1.d. This overdue debt is cited in the SOR in the amount of \$26,489. Applicant testified that this debt was also incurred by his former wife for a vehicle that she purchased for herself. After disputing this bill, Applicant received a letter from the creditor (Exhibit J), stating that they planned to report to the credit bureaus that this account was charged off, with a balance owing. Applicant testified that after he received this letter he called the creditor, and they conceded to him that, since they had no way to verify that he had signed for this vehicle, they would drop this account from the credit reporting agencies. (Tr at 75-76.)

Applicant testified that he is not sure of the status of this debt, but he noted that it was not listed on Exhibit A. It is also not listed on Exhibit 4. Applicant further stated that on previous credit reports this debt had been listed under involuntary repossession, and ultimately his wife filed for bankruptcy without his knowledge or participation. (Tr at 48-52.)

1.e. This overdue debt is cited in the SOR in the amount of \$4,005. Applicant testified that he is unaware of the origin of this debt, and although it was listed on Exhibit 3, it had been dropped off the later credit reports. (Tr at 52.) Exhibit K is a letter dated November 13, 2008, from a financial institution, which appears to be related to this debt. It informed Applicant that they have notified the appropriate credit reporting agencies to remove Applicant's name from reporting on this account. I note that Exhibit 3 shows this debt was disputed, and Exhibits 4 and A do not list this debt.

Applicant conceded that his finances continue to be of concern, since he has received an offer of employment, but he has not been able to become employed because he does not hold a security clearance. However, he testified that he is not overdue on any current debts. (Tr at 54.) Exhibit A, Applicant's most recent credit report of December 12, 2009, shows that Applicant had no accounts that were listed as past due.

Applicant submitted his Certificate of Release or Discharge From Active Duty (DD Form 214), which confirmed that Applicant served in the United States Air Force from February 1986 until March 2006, when he was Honorably Discharged. (Exhibit G.)

Among the honors received by Applicant were the Air Force Achievement Medal, the Air Force Commendation Medal with 3 Oak Leaf Clusters, the Air Forces Expeditionary Medal, the NCO Professional Military Education Ribbon, and many others.

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, primarily by the actions of his ex-wife, although it is not clear if they were incurred when they were married.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties: I find that AG ¶ 20(d) is applicable since Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” The evidence indicates that Applicant acted responsibly to resolve these debts, after he became aware that the debts were incurred by his ex-wife. Since Applicant had a good-faith reason to challenge the debts, he formally sent letters to the creditors and the credit reporting agencies disputing the debts. He also followed up with telephone calls to any of the creditors, whose phone numbers were listed on the credit reports, trying to explain his basis for disputing the bills.

Since Applicant challenged these bills for specific good-faith reasons, and the later credit reports do not list any of the debts from the SOR as overdue, it appears that Applicant has successfully disputed each of them. Therefore, I find that this mitigating condition is a factor for consideration in this case. Applicant is current on all of his recent debts. Therefore, I conclude that Applicant 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 why the Mitigating Condition applies, together with the consideration that Applicant served this country honorably and with distinction for 20 years in the United States Air Force, 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. - 1.e.: 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