



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-00458
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

October 12, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On December 31, 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 February 4, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on March 4, 2010. DOHA issued a notice of hearing on April 12, 2010, and I convened the hearing as scheduled on May 7, 2010. The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Exhibit A, at the time of hearing which was also admitted without objection. DOHA received the transcript of the hearing (Tr) on May 17, 2010. I granted Applicant's request to keep the record open until May 21, 2010, to submit additional documents.

Applicant timely submitted additional documents, which have been identified collectively and entered into evidence as Exhibit B. 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 admitted all of the SOR allegations 1.a., through 1.e., and 1.g., and he denied 1.f. 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 40 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.

Guideline F, Financial Considerations

The SOR lists seven allegations (1.a. through 1.g.) 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 \$74. Applicant testified that this debt had not been paid, but it was included as one of the debts in the bankruptcy that he filed in March 2010. (Tr at 24, 34.) Exhibit A consists of the bankruptcy documents, filed by Applicant. It establishes that this debt was included in this bankruptcy.

1.b. This overdue debt is cited in the SOR in the amount of \$529. Applicant testified that this debt had initially been \$729. It had been reduced to \$529, after he had made several payments, but then he was unable to make additional payments so he included it in his bankruptcy. (Tr at 24-25.) Exhibit A establishes that this debt was included on this bankruptcy.

1.c. This overdue debt is cited in the SOR in the amount of \$7,929. Applicant testified that this debt was for a vehicle that he voluntarily allowed to be repossessed. He averred that he included it on his bankruptcy. (Tr at 25.) Exhibit A establishes that this debt was included in this bankruptcy.

1.d. This overdue debt is cited in the SOR in the amount of \$100. Applicant testified that this debt was not paid, but he included it in his bankruptcy. (Tr at 26.) Exhibit A establishes that this debt was included in this bankruptcy.

1.e. This overdue debt is cited in the SOR in the amount of \$10,112. Applicant testified that this debt was not paid, but he included it in his bankruptcy. (Tr at 26.) Exhibit A establishes that this debt was included in this bankruptcy, although the amount listed as owed was \$7,143.

1.f. This overdue debt is cited in the SOR in the amount of \$2,169. Applicant denied this allegation in his RSOR, and at the hearing he testified that this debt was not his because he was a victim of identity theft. He has been trying to get it resolved by going to the creditor and explaining this was not his debt. However, he has been unsuccessful resolving this debt, so he included it in his bankruptcy. (Tr at 26-28.) Exhibit A establishes that this debt was included in this bankruptcy.

1.g. This overdue debt is cited in the SOR in the amount of \$4,044. Applicant testified that this debt was not paid, but he included it on his bankruptcy. (Tr at 29.) Exhibit A establishes that this debt was included in this bankruptcy, although the amount listed as owed was \$3,523.

Applicant testified that the primary reason for his financial difficulties was that in the years from approximately 2000 to 2004, he was laid off from his employment for periods from two months to six months for each of those years. (Tr at 31-32.) He testified that he eventually increased his income after changing jobs in 2005, and he tried to pay off his bills. However, when his wife lost her job in 2009, he believed that the only way that he would be able to resolve these debts was by filing bankruptcy. (Tr at 36-39.) Applicant testified that he and his wife do not use credit cards and they do not plan to use them in the future, and they now have more income than outgoing debts. (Tr at 53-54.)

Mitigation

Applicant submitted nine very positive character letters in Exhibit B, from people who have known him in his personal and professional life. He was described by his former supervisor as, “dependable, very professional and had a full understanding at any task at hand.” Another former supervisor stated Applicant “always had a great attitude, a team player, and was always eager to provide a high level of customer service. I would recommend [Applicant] and believe he would be an asset to any team.”

Also, while it was submitted long after the deadline for receiving evidence, Applicant did send an email on June 14, 2010, in which he wrote that his bankruptcy was granted, and he received a discharge “under section 727 of title 11.”

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the 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 debt.

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 from the periods of two to six months of unemployment every year for several years, when he was laid off. I find that he acted responsibly, as he initially attempted to pay off his debts when his new employment gradually increased his income. However, when his wife lost her job, and he did not believe he would have sufficient income to pay off his debts, he also used the legal remedy of bankruptcy to ultimately resolve his overdue bills. Therefore, I find that this potentially mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is also applicable since Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" by use of the legal means of bankruptcy. 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 Conditions apply, considered with the very positive character letters, 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 through 1.g.: 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