



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-00628
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

September 29, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On March 24, 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 3, 2009, Applicant replied to the SOR (RSOR) in writing, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on May 1, 2009. DOHA issued a notice of hearing on May 15, 2009, and I convened the hearing as scheduled on July 23, 2009, in Honolulu, Hawaii. The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through L, which were also admitted without objection. I granted Applicant's request to keep the record open until August 7, 2009, to submit additional documents. He timely submitted seven

additional documents, which have been entered into evidence without objection as Exhibits M through S. At the further request of Applicant, the record remained open until September 7, 2009, to submit additional documents. He timely submitted two additional documents, which have been entered into evidence without objection as Exhibits T and U. DOHA received the transcript of the hearing (Tr) on August 7, 2009. Based upon a review of the case file, pleadings, exhibits and testimony, 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 37 years old. He is married, and he has no children. Applicant was employed by a defense contractor, but was terminated on June 5, 2009, because he did not have a security clearance. He is seeking a DoD security clearance in connection with future employment in the defense sector.

The SOR lists five allegations (1.a. through 1.e.) 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 \$19,874. Applicant testified that this debt has not been paid. The actual debt is \$8,183, and the remainder is penalties and late payments (Tr at 59) (Exhibit 4).

In order to help him resolve his overdue debt, Applicant engaged the services of a credit counseling company (CCC) in January 2008. Applicant averred that he attempted to resolve his financial difficulties eight months before he even applied for a security clearance (Tr at 50). Exhibit K shows Applicant's first payment of \$556.75 to the CCC on February 27, 2008. He had made arrangements to pay the CCC that amount every month, and he only missed one monthly payment, which he had arranged with the CCC (Exhibit B) His last payment was on April 28, 2009, and he had paid them approximately \$3,000. The plan was that approximately half of his payments would eventually go to pay his creditors and the other half was paid as fees to the CCC (Tr at 33-35). He was forced to stop making payments to the CCC because of his loss of employment.

After Applicant lost his employment, he employed the services of an attorney on May 31, 2009, to file for bankruptcy (Exhibit K), which consisted of a meeting with the attorney and paying him \$400 each visit for a total of \$1,600. A Notice of Bankruptcy submitted after the hearing (Exhibit U) establishes that a Chapter 13 bankruptcy was filed on Applicant's behalf on August 24, 2009, and a creditor's meeting was scheduled to be heard on September 24, 2009. This debt is scheduled to be resolved in bankruptcy.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$14,251. Applicant testified that this debt has not been paid. The actual debt is \$6,915, and the remainder is penalties and late payments (Tr at 57) (Exhibit 4). This debt was also originally to be satisfied by the CCC and it is now scheduled to be resolved in bankruptcy.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$1,196. Applicant testified that he was informed by his CCC that this debt has been settled for \$598 through his CCC (Tr at 37-38). Exhibit 2, a letter from the representative of the CCC, dated March 31, 2009, indicates that this debt has settled. I find that this debt has been resolved.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$1,017. Applicant testified that he was informed by his CCC that this debt was also settled for \$598 through his CCC. There has been some confusion about the status of this debt, because Applicant has not received a letter from this creditor showing that this debt was resolved. However, based upon the representation he received from the CCC, I find that this debt has been resolved (Exhibit 2)

1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$8,069. Applicant testified that this debt has not been paid. The actual debt is \$2,319, and the remainder is penalties and late payments (Tr at 59). This debt was also originally to be satisfied by the CCC and it is now scheduled to be resolved in bankruptcy.

In addition to the debts listed on the SOR and discussed above, Applicant testified that he owes \$5,198 for Federal taxes and \$1,638 for state tax. He is paying \$200 a month for the Federal tax and \$126 a month for the state tax. This overdue tax debt resulted in part because of his wife's second job and not declaring enough deductions. They will continue paying this debt, which is expected to be included for payment as part of his Chapter 13 bankruptcy (Tr at 92-93).

Applicant testified that his financial difficulties occurred over time through bills for car repairs, medical treatments, vehicle purchases, and he also borrowed money on his credit card to attend law school for one semester. He was able to keep current on these debts until he started to receive late salary payments from his employer in 2006. As a result, he was forced to make late payments on his credit cards, and he received extremely severe penalties and interest charges, which greatly increased his debt.

At the time of the hearing, Applicant had no credit cards, and he is current on all of his other debts. Exhibit N includes a current Personal Financial Statement (PFS), which shows that Applicant has very little net remainder each month. However, at the time he completed this form, he did not yet know what he was scheduled to receive in unemployment compensation, so that was not included in his PFS. Exhibit S is a copy of the Applicant's unemployment compensation check, which shows that he now receives \$978 net, for every two weeks. This certainly will improve his financial situation until he can obtain employment.

Mitigation

Applicant submitted two very positive character letters (Exhibits F and G). Exhibit F from his former security manager stated, “[Applicant] has always acted in a professional manner and has consistently demonstrated loyalty and trustworthiness during his employment.” The letter from his former supervisor said, “[Applicant] has always displayed a high degree of integrity and responsibility . . . performed with the highest degree of professionalism.” (Exhibit G).

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 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 many 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 in large part the result of his receiving late payments from his employer, which caused him to fall behind on his credit card payments. Since he fell behind, he has acted quite responsibly to resolve all of these overdue debts. First he engaged the services of a CCC and made payments of \$556.75 per month to them for more than one year, only stopping after he was terminated from his employment, because he could not get a security clearance. He thereafter employed an attorney and has paid him \$1,6000 to file for bankruptcy to resolve his debts. What I find most impressive is Applicant began this process with the CCC eight months before he even applied for a security clearance, which indicates that the attempt to resolve his financial difficulties was not motivated by his desire for a security clearance. Therefore, I find that this mitigating condition is a significant factor

for consideration in this case. I also find MC 20 (d) is applicable since Applicant has been making a good-faith effort to resolve all of his overdue debts. Based on Applicant's overall conduct, I conclude that he 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) 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 along with the extremely positive letters written on Applicant's behalf, I find that the record evidence leaves me with no 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 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.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