



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-01387
)	
Applicant for Security Clearance)	

Appearances

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

February 3, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On July 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 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 August 17, 2009, Applicant replied to the SOR (RSOR) in writing, and requested a hearing before an Administrative Judge. I received the case assignment on September 9, 2009. DOHA issued a notice of hearing on September 15, 2009, and I convened the hearing as scheduled on October 19, 2009. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted no exhibits at the time of hearing. DOHA received the transcript of the hearing (Tr) on October 28, 2009. I granted Applicant's request to keep the record open until November 2, 2009, to submit additional documents. He timely

submitted additional documents, which have been identified and entered into evidence collectively as Exhibit A. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his RSOR, Applicant admitted SOR allegations: 1.a., b., c., e., g., and h. He denied: 1.d. and 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 48 years old. He is currently married and has two children. He has received a Bachelor of Science degree in Aerospace Engineering. He served in the United States Navy from 1992 to 1995, when he received an Honorable Discharge. At the time of the hearing, Applicant was employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

The SOR lists eight allegations (1.a. through 1.h.) 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. It is alleged in the SOR that Applicant petitioned for Chapter 7 bankruptcy in March 2000, and his debts were discharged in bankruptcy in September 2000. Applicant testified that the reason that he had financial difficulties that caused him to file for bankruptcy in 2000, included the fact that his parents were killed in a train accident, in 1995, which caused him some depression, and his first wife left him with a significant amount of bills. He also left the Navy around this time, and it took him about eight months to secure additional employment. The bankruptcy discharged all of his debts except his college loans and the mortgage on one of his homes (Tr at 28-30).

1.b. This overdue debt is cited in the SOR in the amount of \$6,375. Applicant testified that he contacted this creditor in 2007, but he was not able to make a payment arrangement. This debt has not been paid or reduced (Tr at 30-31).

1.c. This overdue debt is cited in the SOR in the amount of \$5,534. Applicant testified that he contacted this creditor, but he was not able to make a payment arrangement. This debt has not been paid or reduced (Tr at 31-33).

1.d. This overdue debt is cited in the SOR in the amount of \$34,456. Applicant testified that his current wife planned to file bankruptcy to resolve this credit card debt. However, upon questioning, Applicant conceded that this debt was incurred while he and his current wife were married, so Applicant is also responsible for this debt. At this time, this debt has not been paid or reduced (Tr at 33-34).

1.e. This overdue debt is cited in the SOR in the amount of \$111,000. Applicant testified that this debt is for a home equity line of credit for his current home. While he has been attempting to renegotiate a payment plan for this debt, he has not yet done so, and he estimated that he has not made on a payment on this debt for the last eighteen months to two years. At this time, this debt has not been paid or reduced (Tr at 34-37).

1.f. This overdue debt is cited in the SOR in the amount of \$31,465. Applicant testified that he contacted this creditor for this credit card debt, but he was not able to make a payment arrangement. This debt has not been paid or reduced (Tr at 37).

1.g. This overdue debt is cited in the SOR in the amount of \$23,336. Applicant testified that this credit card debt has not been paid or reduced (Tr at 37-38).

1.h. This overdue debt is cited in the SOR in the amount of \$120,000. This debt, for income property that was ultimately lost in foreclosure, is still owed (Tr at 39-41).

Applicant testified that his financial difficulties occurred when he worked for a company on a speculation basis, where he did not receive an income, in the hope that eventually there would be a significant payout. However, the business did not pan out. Additionally, when his wife became pregnant, she stopped working so they lost that income. Finally, the home he purchased on speculation also was not successful, and it was eventually repossessed, as reviewed in 1.f., above (Tr at 41-44).

Mitigation

Applicant submitted three positive character letters in Exhibit A. One letter was from his supervisor, dated October 30, 2009, which stated that Applicant “has always been diligent in doing the right thing for the United States Air Force.” One of the other letters was from a Lieutenant Colonel in United States Air Force. It stated that Applicant’s “patriotism and his sense of right versus wrong are evident in his persona. Though it may take him some time to correct his financial situation, I am convinced that he is committed to doing just that, by steady diligent work.”

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 trustworthiness 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 all 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 testified that his financial problems resulted from a lack of income because he was involved in employment without compensation, and his wife stopped working when she became pregnant. However, he also made an unfortunate business choice when he purchased investment property. Also, since he has not repaid or resolved any of his considerable overdue debt, I cannot find that he has acted responsibly. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case.

Applicant has not resolved any of his overdue debt. I conclude that until he is able to significantly reduce this overdue debt, 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.

