



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)	
)	
-----)	ISCR Case No. 09-01425
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tom Coale, Esquire, Department Counsel

For Applicant: *Pro Se*

October 29, 2009

Decision

MOGUL, Martin H., Administrative Judge:

On April 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for Applicant (Item 1). 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.

Applicant responded to the SOR (RSOR) in writing, on May 27, 2009 (Item 3). He requested that his case be decided on the written record in lieu of a hearing.

On June 11, 2009, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on August 5, 2009. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on September 9, 2009.

In the FORM, Department Counsel offered seven documentary exhibits (Items 1-7). No documents were offered by Applicant. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his RSOR (Item 3) Applicant admitted SOR allegations 1.a., and 1.c. through 1.f., and he denied 1.b., 1.g., and 1.h., under Guideline F. He also admitted 2.a., under Guideline E. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including the FORM, Applicant's RSOR and the other admitted documents, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 34 years old. He works for a defense contractor, and he seeks a Department of Defense security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline F- Financial Considerations)

The SOR lists eight allegations (1.a. through 1.h.) regarding overdue debts under Adjudicative Guideline F. All of the allegations will be discussed in the same order as they were listed in the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$14,653. As stated above, Applicant admitted this debt in his RSOR (Item 3), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.b. This overdue debt is cited in the SOR in the amount of \$9,209. Applicant denied this debt in his RSOR (Item 3), stating that this debt was for a vehicle belonging to his ex-wife in his divorce decree. In his response to interrogatories (Item 7), Applicant stated that this debt is the same as 1.a., above. In reviewing the credit reports submitted by the Government (Items 5 and 6), I find there are different collection account numbers and significantly different amounts owed for these two debts, and the report indicated that one debt was for an auto loan, while the other debt did not identify the type of loan. Therefore, I cannot conclude that this debt is the same as 1.a., above. I find that no evidence has been introduced to establish that this debt has been paid.

1.c. This overdue debt is cited in the SOR in the amount of \$1,548. Applicant admitted this debt in his RSOR (Item 3), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.d. This overdue debt is cited in the SOR in the amount of \$379. Applicant admitted this debt in his RSOR (Item 3), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.e. This overdue debt is cited in the SOR in the amount of \$2,868. Applicant admitted this debt in his RSOR (Item 3), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.f. This overdue debt is cited in the SOR in the amount of \$2,830. Applicant admitted this debt in his RSOR (Item 3), and no evidence has been introduced to establish that this debt has been resolved. I find that this debt has not been paid.

1.g. This overdue debt is cited in the SOR in the amount of \$13,368. Applicant denied this debt in his RSOR (Item 3). In his response to interrogatories (Item 7), Applicant stated that this debt is the same as 1.a., above. In reviewing the credit reports submitted by the Government (Items 5 and 6), I find these two debts are both identified as auto loans and the amounts owed for these two debts are reasonably close, so I conclude that this debt is the same as 1.a., above and it is only owed once.

1.h. This overdue debt is cited in the SOR in the amount of \$538. Applicant denied this debt in his RSOR (Item 3). In his response to interrogatories (Item 7), Applicant stated that he did “not know what this debt is.” In reviewing the credit report (Item 5), there is a notation beside this debt that states “consumer says acct not his.” I find that Applicant has made a good faith effort to dispute this debt.

Paragraph 2 (Guideline E - Personal Conduct)

2.a. Applicant executed a signed SCA on July 19, 2009 (Item 4). Question 28.a. asks, “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” Applicant answered “No” to this question, and he listed no debts. The Government alleges that Applicant should have included the debts listed in the SOR as 1.a. through 1.d., and 1.f. through 1.h., above. There is no dispute that these debts were all long overdue and were still owing at the time Applicant completed the SCA, and they should have been included in the responses to 28.a.

Also, while it was not alleged on the SOR, Question 28.b. of the SCA asks, “Are you currently over 90 days delinquent on any debt(s)?” Applicant answered “No” to this question, and he listed no debts. Applicant also should have included the same debts as those alleged on 2.a., above.

Applicant offered no explanation for his failure to list any of the debts that he had owed for a significant period of time.

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 Government has established that Applicant has had a history of financial difficulties and overdue debts.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC 19. (a) and DC 19. (c) apply, because of Applicant's inability or unwillingness to satisfy his debts, and his long history of not meeting financial obligations.

While Applicant submitted evidence of his divorce from his ex-wife on March 3, 2006, no evidence was introduced to establish that this was the cause of Applicant's financial difficulties. Additionally, Item 7 contained Applicant's Personal Financial Statement, dated March 16, 2009, which showed that Applicant has a net remainder of \$1,149.91 a month. There was no explanation given by Applicant as to why he has not used any of this remainder to resolve his overdue debts. I cannot find that any Mitigating Condition (MC) applies as no evidence has been introduced to establish that Applicant has resolved any of his overdue debts. I, therefore, hold Guideline F against Applicant.

Guideline E, Personal Conduct

With respect to Guideline E, the evidence establishes that Applicant provided incorrect material information to the Government on the SCA that he executed on July 19, 2007. Applicant identified no debts that were over 180 days overdue in the last seven years prior to his completing the SCA, nor any current debts that were over 90 days overdue, when clearly he should have identified the debts listed on the SOR. Applicant gave no explanation for his failure to put the Government on notice that he had financial difficulties.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts or fails to furnish relevant information to the Government, it is extremely difficult to conclude that he nevertheless possesses the judgment, and honesty necessary for an individual given a clearance. In this case, based on Applicant's overall history, my inability to see the Applicant and judge his veracity in person, and the lack of any witness to provide testimony regarding Applicant's character, I can find no reasonable explanation for Applicant's failure to provide this very significant information to the Government on the SCA, and I must conclude that Applicant knowingly and willingly failed to furnish honest information to the Government.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I conclude that DC16. (a) applies because Applicant deliberately provided false and misleading information to the Government in a SCA. No Mitigating Condition applies under this Guideline. As a result of the misinformation that Applicant provided to the Government, his conduct exhibits questionable judgement, unreliability, and a lack of candor. I resolve Guideline E against Applicant.

On balance, it is concluded that the Applicant has not overcome the Government's evidence opposing his request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the allegations expressed in Paragraphs 1 and 2 of the Government's SOR.

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 have considered the potentially disqualifying and mitigating conditions under Guidelines F and E, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including Applicant's history of financial difficulties, his failure to resolve the overdue debts, and his willful omissions made to the Government, 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 concept. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant

Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge