



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-01444
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

May 18, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On August 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. 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 September 9, 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 October 15, 2009. DOHA issued a notice of hearing on October 23, 2009, and I convened the hearing as scheduled on December 8, 2009, in Las Vegas, Nevada. The Government offered Exhibits 1 through 12, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through U at the time of hearing, which were also admitted without objection. I granted Applicant's request to keep the record open until December 22, 2009, to submit

additional documents. He timely submitted nine additional documents, which have been identified and entered into evidence collectively, without objection, as Exhibit V. On December 18, 2009, Applicant requested an additional extension to submit additional documents. He timely submitted three more documents, which have been identified and entered into evidence collectively, without objection, as Exhibit W. DOHA received the transcript of the hearing (Tr) on December 23, 2009. 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 47 years old. He is married, but he and his wife separated in November 2006, and they are in the process of getting divorced. (Tr at 53.) They have one daughter. Applicant served for 27 years in the United States Air Force, and he retired with an Honorable Discharge. 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 3 allegations (1.a. through 1.c.) 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 \$9,696. Applicant testified that this debt was for a credit card of his wife. He was not aware of this debt until November 2009, and he thereafter paid off this debt. (Tr at 49-50.) Exhibit W includes a letter from the creditor of this debt, dated December 29, 2009, indicating that Applicant settled this debt in the amount of \$5,850.

1.b. This overdue debt is cited in the SOR in the amount of \$3,342. Applicant testified that this debt was incurred from an account of his wife. When she did not make payments, the case was taken to court, and a judgement was issued. Applicant's wife is now being garnished in the amount of \$85 a month to resolve this debt. (Tr at 50-53.) A letter from Applicant's wife confirms that she is being held solely responsible by the creditor to resolve this debt, and the creditor is not pursuing the Applicant. (Exhibit M.)

1.c. This overdue debt is cited in the SOR in the amount of \$25,708. Applicant testified that this is an account that he used to pay off some of his other debts. At the time of the hearing, he had been paying \$100 a month from March through November 2009 to pay off this debt. He plans to continue making these payments until the debt is resolved, and he stated that the creditor is satisfied to continue collecting his payments until the debt is paid in full. (Tr at 53-54.)

Applicant explained that when he was deployed, his wife engaged the services of a law firm that served as a debt consolidation company (DCC), to try to reduce their debt when she lost her job. Applicant and his wife paid this dcc approximately \$15,000 or \$16,000 over the period from October 2007 through November 2008. (Exhibit 7.) He testified that this DCC was ultimately terminated by the Supreme Court of Florida for business practices that were detrimental to consumers. Applicant has since received a refund from the court of \$9,000, which has been used to resolve another debt, not listed on the SOR. (Tr at 54-60.)

Applicant testified that he is still waiting for an additional \$4,600 to be refunded to him, and he is planning to use that to reduce the debt that is listed as 1.c. The creditor has indicated that they would accept an additional \$10,414 to settle this debt, and when Applicant's receives the \$4,600, it is his plan to add \$1,000 with that \$4,600 for an initial payment of \$5,700 and follow up with \$1,000 a month for four months, and finally pay the remainder after that. The goal is to resolve the debt by June of 2010. (Tr at 60-62.) During cross examination, Applicant conceded that he was not certain how much additional money he would recover from the court. (Tr at 85-86.)

Applicant testified that when he was deployed, off and on from February 2007 until May 2008, he gave his wife his power of attorney. During that period, she refinanced the loan for his automobile, taking out \$10,000 in cash, and raising his monthly payments for the car loan from \$450 a month to \$600 a month. She also lost her job in March 2007, and she was unemployed for three months.

Applicant testified that his wife incurred additional debts without his knowledge, which were not listed on the SOR. As he became aware of these debts he has resolved these as well. (Tr at 72-73.)

Paragraph 2 Guideline E, Personal Conduct

2.a. Applicant executed a signed Security Clearance Application (SCA) on July 28, 2008. (Exhibit 1.) The SOR incorrectly alleges that Question 28.b. of the SCA asks, "In the last 7 years, have you been over 90 days delinquent on any debt(s)?" Question 28.a. actually asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Question 28.b. of the SCA actually asks, "Are you currently over 90 days delinquent on any debt(s)?" Applicant answered "No" to questions 28. a. and b., and he listed no debts.

It is further alleged in the SOR that Applicant "failed to disclose that [he] was over 90 days delinquent on debts listed above in sub-paragraphs 1(a) and 1(b) above." Applicant testified that he had already been signed up with the dcc for approximately six to eight months by the time he completed the SCA, and he believed the DCC was paying his bills. He stated that he also explained to the investigator for the clearance that his debts were being resolved by the DCC. When he learned that the DCC was having trouble, he contacted the investigator, and told him that he was not sure what the status of his debts was. He credibly reiterated that he never intended to mislead the

Government, he simply believed the DCC was doing what he was paying them to do, which was pay off his debts. (Tr at 66-70, 108.)

Mitigation

Applicant testified, and the evidence has established, that of the five overdue debts that, unbeknownst to Applicant, were not paid by Applicant's wife, he has now resolved three of them. He is in the process of resolving one of the last two overdue debts, with his wife paying off the other debt. (Tr at 119-121.)

Applicant prepared a Personal Financial Statement on April 15, 2009 (Exhibit 9), which shows that he has a net monthly remainder of approximately \$1,395, part of which he plans to use to resolve the overdue debts, and stay current on his more recent debts. In his post hearing submissions (Exhibit W), Applicant indicated that he planned to start paying \$200 a month on the debt listed as 1.b., even though it was the judgement incurred by his wife. He also planned to increase the payments on the debt listed as 1.c., from \$100 a month to \$200 a month.

Finally, Applicant submitted six extremely positive character letters in Exhibits V and W, from individuals who have known Applicant in his employment capacity. He was described by his current supervisor as a "stellar employee . . . a person of integrity, good fiscal responsibility, trustworthy and a loyal security sentry." His supervisor also stated that he spoke with Applicant's prior co-workers and supervisors before hiring him and "each one stated that in addition to his technical competence and work ethic he was a person of good conduct and character, very loyal to the United States." A co-worker and associate for the last 10 years, and a retired Master Sergeant for the United States Air Force, described Applicant as "an intelligent, capable, and personable maintainer. He is trustworthy and with out [sic] question; a great American."

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 three significant delinquent debts.

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’s financial problems resulted in part from the failure of the debt consolidation company to resolve or even pay down Applicant’s debts, despite his paying the company approximately \$15,000. Additionally, his wife’s unemployment contributed to their financial problems. Finally, unbeknownst to Applicant at the time, his wife failed to pay their bills for periods of time, including when he was deployed.

I find that Applicant has acted responsibly since these debts were incurred. First, he engaged the services and paid a substantial fee to a debt consolidation company. Additionally, Applicant has paid off two of his overdue debts, one that was on the SOR (1.a.) and one that had been resolved before the SOR was issued. He also is making payments on the debt listed above as 1.c. Finally, even though debt 1.b. is being resolved by his wife, from whom he is separated, as per the judgement, he indicated in his post hearing submission that he is attempting to help his wife resolve this debt as well. (Exhibit V.) Therefore, I find that this mitigating condition is a factor for consideration in this case.

I also find that AG ¶ 20 (d) is applicable since Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

Applicant is current on all of his recent debts Therefore, I conclude that Applicant has mitigated the financial concerns of the Government.

Guideline E, Personal Conduct

With respect to Guideline E, I find that Applicant testified credibly that he did not knowingly provide incorrect material information to the Government on the SCA regarding his overdue debts. Applicant had engaged the services of a company to resolve his debts, and he had paid them approximately \$15,000. He had a good faith belief that all of his debts were being resolved in a timely manner. Additionally, at the time he completed the SCA, he was not aware that his wife had not been paying the debts and had incurred additional debts.

I do not find that any disqualifying condition applies under this guideline. I therefore, resolve Guideline E for Applicant.

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, together with the very strong recommendations on his behalf, 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.c.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	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