



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



In the matter of:)	
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)	ISCR Case No. 09-01747
)	
Applicant for Security Clearance)	

Appearances

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

June 14, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On October 20, 2010, 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), effective within the Department of Defense for SORs issued after September 1, 2006.

On November 16, 2010, Applicant replied to the SOR (RSOR) in writing, and he initially requested a hearing based on the written record. Department Counsel thereafter requested a hearing before an Administrative Judge. I received the case assignment on March 7, 2011. DOHA issued a notice of hearing on March 7, 2011, and I convened the hearing as scheduled on March 31, 2011. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through E at the time of hearing, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on April 8, 2011. I granted

Applicant's request to keep the record open until April 15, 2011, to submit additional documents, and one additional document that was received, has been identified and entered into evidence without objection as Exhibit F. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Findings of Fact

In his RSOR, Applicant admitted both SOR allegations 1.a. and 1.b. 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 following additional findings of fact:

Applicant is 48 years old. He is currently unmarried, although he was married from 1985 to 1991, and again from 1993 to 2005, and he has one son. He served in the United States Air force from 1980 through 1984, and he received an Honorable Discharge. Applicant has held a security clearance for 29 years. He has been employed by the same defense contractor for 22 years, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists two allegations (1.a. and 1.b.) regarding overdue debts under Adjudicative Guideline F. As reviewed above, Applicant admitted both allegations in his RSOR. The allegations will be discussed below as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR for real estate mortgage that was foreclosed for a delinquent account in the approximate amount of \$296,000. (Tr at 54-57.)

1.b. This overdue debt is cited in the SOR for an account that is past due in the amount of \$74,205.

Applicant testified that these debts are for a home that he purchased as his primary residence on December 12, 2005, for \$371,000. He continued making his monthly payments until May 1, 2008. Applicant stated that his house was in an area of the country that was very severely affected by the housing crisis, and his house depreciated by \$200,000. The loan he used to purchase his home was 3/1 ARM, so that the amount of the monthly payments for the loans would be fixed for three years, and then the monthly payments would go up significantly after the three years. Applicant used two loans to purchase the house. The first loan was for 80% of the value of the house, and that is the basis for 1.a. The second loan was for 20% of the value of the house, and that was to be considered for the down payment. That loan is 1.b. on the SOR.

Applicant testified that he had been paying approximately \$1,900 for the two loans, but the amount he was going to have to pay was significantly more, although at the hearing he did not know what the amount of the payments was going to be. He also had the financial problem of his fuel prices rising, since he lived far from his employment, so that he was paying about \$400 a month for fuel. Applicant could not sell his house in a normal real estate transaction since it was valued at \$200,000 less than he paid for it. He considered renting out the house, but he learned that the rental market was so weak that he would have received approximately \$500 or \$600 less each month than what he would have to pay for the mortgage loans, which he could not afford with he would have had to pay for rent for his living accommodations. He examined the possibility of a short sale, but he was informed that if he was successful with a short sale, he would still be liable to pay taxes for what he failed to pay on the loan as taxable income. (Tr at 28-31.)

Since Applicant believed it was the most advantageous move he could make, he simply stopped making payments on his loan on May 1, 2008. He immediately informed his company's security department of his financial situation. He also immediately vacated the house on May 1, 2008, and rented an apartment closer to his employment site. (Tr at 31-32.) Applicant testified that the house was sold at auction in February 2009, and at least once more after that. He averred that he did not believe the creditors were going to pursue him for any additional money, because he was informed that as long as the loans in question were received at the time of purchase and never exceeded the initial value of the home, then he would not be responsible for any additional money to the creditor if the home was foreclosed. The creditors have not made any further attempt to collect for any money owed. (Tr at 31-35.)

Applicant averred that, with the exception of the two loans for the home purchase, he has been current on all of his other debts, both before and after the purchase and subsequent foreclosure of his home. He testified that he has never had a debt in collection or charged off, never defaulted on any other loan, nor had a lien placed against him or failed to file and pay his taxes. (Tr at 42-43.) Applicant's current gross income is \$108,000 a year, and his monthly expenditure for rent is \$1,700 a month, which, he testified, he has no difficulty in paying. (Tr at 35-38.)

Mitigation

Applicant submitted two positive character letters. The first was from the Director of Security for Applicant's employer, who indicated that he has worked on and off with Applicant for more than 20 years. He wrote, "Along with my colleagues, I can attest that [Applicant] possesses the highest degree of integrity and follows the highest standards of professionalism. With the skill and commitment I witness from [Applicant] he has my full and complete trust." The second letter was from his supervisor who has known Applicant for many years. He described Applicant as "honest, reliable, and dedicated." (Exhibit A.)

Applicant submitted documents showing that he received three company awards and commendations for his good work. (Exhibits B, C, D.) He also submitted his DD

Form 214, confirming that Applicant served in the United States Air Force from 1980 to 1984 and received an Honorable Discharge. It also shows that he earned the Air Force Training Ribbon, the Air Force Good Conduct Medal, the Air Force Longevity Service Award, and the Air Force Outstanding Unit Award. (Exhibit E.)

Finally, in his post hearing submissions, Applicant forwarded his Performance Evaluation from his employer for 2010. His overall performance as to his objectives was rated, "All Achieved." He was described as "diligent and productive." He also included a letter from a Contractor Special Security Officer of his employer, who wrote that Applicant's security records were reviewed as far back as they were available, and from 1999 to the present, Applicant has had no security violations or incidents. (Exhibit F.)

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 commonsense 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 had 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 financial downturn that made his house worth \$200,000 less than when he purchased it, and the significant increase in the amount he would be required to pay on his home loans. Because of the decrease in value of the home, it could not be sold in a regular sale, nor would renting the house allow Applicant to pay the mortgage loans and to pay for rent. If Applicant had made a short sale, he believed, based on information he received, that he would still be liable to pay taxes for what he failed to pay on the loan as taxable income.

I find that Applicant has acted responsibly, since as soon as Applicant stopped making his monthly mortgage payments, he vacated the house, so that the bank could take possession of it and ultimately resell it, and with the exception of the two loans for the home purchase, he has been current on all of his other debts, both before and after the purchase and subsequent foreclosure of his home. Applicant also informed his employer's security officer of his financial difficulties. Therefore, I find that this mitigating condition is a factor for consideration in this case.

I conclude that Applicant acted reasonably and responsibly when faced with a difficult, and unfortunately not uncommon, financial challenge. In all other financial areas, Applicant has and continues to maintain economic stability. Therefore, 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) 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, including all of the reasons cited above as to why the Mitigating Conditions apply. I then reviewed the positive character letters on behalf of Applicant, his excellent military and civilian employment history, including 22 years with his current employer, and no security violations noted in a career of holding a security clearance for almost 30 years. 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 and 1.b.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge