



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-02305
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

August 24, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On July 14, 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 21, 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 21, 2009. DOHA issued a notice of hearing on October 23, 2009, and I convened the hearing as scheduled on December 9, 2009. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through D at the time of hearing, which were also admitted without objection. I granted Applicant's request to keep the record open until December 16, 2009, to submit additional documents. He

timely submitted 14 additional documents, which have been identified collectively, as Exhibit E. Department Counsel objected to these documents because they were received one day beyond the date that the record was left open. While they were received one day after the cut off date, in order to establish a complete record, that objection is overruled. Department Counsel also objects that some of the documents are not signed. I will allow the documents to be entered into evidence, but I will consider what weight to give them if they are not signed. Applicant also submitted one additional document past the due date with the same objection by Department Counsel. The objection is overruled, and this document has been identified and entered into evidence as Exhibit F. DOHA received the transcript of the hearing (Tr) on January 4, 2010. Based upon a review of the case file, pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is denied.

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 57 years old. He was married from 1978 to 2004, when his wife died. He has two children. He served in the United States Navy from 1972 to 1976 and received an Honorable Discharge (Exhibit E.) 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 17 allegations (1.a. through 1.q.) regarding financial difficulties under Adjudicative Guideline F. All of the debts were established by Government Exhibits 3 through 8. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. The SOR alleges that in December 2004, Applicant filed a Chapter 13 bankruptcy in United States Bankruptcy Court, but this bankruptcy was later dismissed. At the hearing, Applicant testified that, unbeknownst to him, his wife filed bankruptcy regarding a trucking company that was incorporated only in her name. When he learned of the bankruptcy, he appeared in court and moved to dismiss the bankruptcy. (Tr at 43.)

1.b. The SOR alleges that in May 2005, a tax lien was filed against Applicant in the amount of \$10,993, which has not been paid. Exhibit A establishes that tax liens for SOR 1.b., 1.c., and 1.d., are still due and owing by Applicant. Applicant testified that this tax lien arose out of the corporation created by his late-wife, and he contends that, since his name was not associated with the corporation, he is not liable for this tax lien. He plans to dispute this with the state tax board. (Tr at 55.) While Applicant submitted some documents from the state tax board (Exhibit E), I do not find that they establish any of the tax liens, listed as 1.b., 1.c., or 1.d., have been released.

1.c. The SOR alleges that in November 2002, a tax lien was filed against Applicant in the amount of \$3,319, which has not been paid. Applicant also contends that he is not liable for this tax lien. (Tr at 55.) For the reasons stated in 1.a., above, I do not find that this tax lien has been released.

1.d. The SOR alleges that in May 2002, a tax lien was filed against Applicant in the amount of \$12,479, which has not been paid. Applicant also contends that he is not liable for this tax lien. (Tr at 55.) For the reasons stated in 1.a., above, I do not find that this tax lien has been released.

1.e. This overdue debt is cited in the SOR in the amount of \$3,567. Applicant testified that this debt was incurred by his late wife and he was unaware of this debt and the subsequent debts, listed as 1.f through 1.q., until he received notification from a credit report, during the security clearance application process. He has engaged the services of a law firm to help him resolve these debts, but at this point it is still due and owing. (Tr at 56-58.)

1.f. This overdue debt is cited in the SOR in the amount of \$12,000. Applicant testified that this debt is still unpaid. (Tr at 59.)

1.g. This overdue debt is cited in the SOR in the amount of \$1,000, with an approximate balance of \$45,000. Applicant testified that this debt was resolved when he sold his house with a quitclaim deed. (Tr at 59-60.) No evidence was offered to establish that this debt has been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$3,000, with an approximate balance of \$110,000. Applicant testified that he was unaware of the origination of this debt, but it is still unpaid. (Tr at 61-62.)

1.i. This overdue debt is cited in the SOR in the amount of \$29,000. Applicant testified that he was unaware of the origination of this debt, but it is still unpaid. (Tr at 62.)

1.j. This overdue debt is cited in the SOR in the amount of \$7,846. Applicant testified that he was unaware of the origination of this debt, but it is still unpaid. (Tr at 62.)

1.k. This overdue debt is cited in the SOR in the amount of \$2,828 for another tax lien. Applicant testified that this tax lien has not been released. (Tr at 63.)

1.l. This overdue debt is cited in the SOR in the amount of \$30,319 for a federal tax lien. Applicant testified that this tax lien has not been released. (Tr at 63.)

1.m. This overdue debt is cited in the SOR in the amount of \$292. Applicant testified that he was unaware of the origination of this debt, but it is still unpaid. (Tr at 64.)

1.n. This overdue debt is cited in the SOR in the amount of \$36,99400. It was amended at the hearing to accurately reflect \$36,994. Applicant testified that he was unaware of the origination of this debt, but it is still unpaid. (Tr at 64-65.)

1.o. This overdue debt is cited in the SOR in the amount of \$3,378. Applicant testified that he was unaware of the origination of this debt, but it is still unpaid. (Tr at 66-67.)

1.p. This overdue debt is cited in the SOR in the amount of \$1,445. Applicant testified that he was unaware of the origination of this debt, but it is still unpaid. (Tr at 67.)

1.q. This overdue debt is cited in the SOR in the amount of \$1,072. Applicant testified that he was unaware of the origination of this debt, but it is still unpaid. (Tr at 67-68.)

Paragraph 2 Guideline E, Personal Conduct

Applicant executed a Security Clearance Application (SCA) on December 2, 2008. (Exhibit 1.) The SOR alleges that Applicant failed to provide truthful and candid answers to several of the questions. They will be reviewed in the same order as they were addressed in the SOR:

2.a. Question 27 a. of the SCA asks, "In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?" Applicant answered "No" to this question. It is alleged in the SOR that he should have included the bankruptcy discussed in 1.a., above. At the hearing, Applicant testified that he had never filed a petition for bankruptcy, but as reviewed above, it is his contention that his late wife did file a petition for bankruptcy and he filed to dismiss the bankruptcy. (Tr at 70-71.) Since Exhibit 7, which is part of the petition for bankruptcy, has Applicant's signature, it appears that Applicant was involved in the initial bankruptcy when it was filed.

2.b. SOR allegations 2.b, 2.c., 2.d., and 2.e. all concern question 27c. of the SCA, which asks, "In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?" Applicant answered "No" to this question. It is alleged in the SOR that he should have included the tax lien discussed in 1.b., above. At the hearing, Applicant testified that he was not aware of any of the tax liens when he completed the SCA, and he only became aware when he first saw his credit reports during his interview with a Government investigator. (Tr at 70-72.)

2.c. It is alleged in the SOR that Applicant also should have included the tax lien discussed in 1.c., above, in response to question 27c. Again, Applicant testified that he was not aware of any of the tax liens when he completed the SCA. (Tr at 70-72.)

2.d. It is alleged in the SOR that Applicant also should have included the tax lien discussed in 1.d., above, in response to question 27c. As discussed above, Applicant testified that he was not aware of any of the tax liens when he completed the SCA. (Tr at 70-72.)

2.e. It is alleged in the SOR that Applicant also should have included the tax lien discussed in 1.k., above, in response to question 27c. As discussed above, Applicant testified that he was not aware of any of the tax liens when he completed the SCA. (Tr at 70-72.)

2.f. Question 28a. of the SCA asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "No" and he listed no debts. It is alleged in the SOR that Applicant also should have included all of the debts listed on paragraph 1 of the SOR. Applicant testified that he was not aware of any of any of the overdue debts when he completed the SCA, as his wife always paid the bills, and she never informed him of the overdue debts. He contended that if he had been aware of the overdue debts he would have included them on his SCA. (Tr at 72-73.) On cross examination by Department Counsel, Applicant conceded that when he became aware of the bankruptcy, he also learned of his overdue debts, so he should have included the debts on the SCA. (Tr at 81-84.)

Mitigation

Applicant submitted several positive character letters in Exhibits A through C, E and F, from individuals who have known Applicant in his employment and personal capacity and wrote in positive terms about him. One letter was from a woman who was identified as his sister-in-law. She confirmed that Applicant's late wife did not always reveal their financial situation to him.

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 many 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 Applicant’s late wife to pay or resolve the accumulated debts or make him aware of them.

However, I do not find that Applicant has acted responsibly since he became aware of these debts in 2005, when he first attempted to have the bankruptcy dismissed. Since that time, I do not find that any of his overdue debts have been resolved. Therefore, I find that this mitigating condition is a not factor for consideration in this case.

AG ¶ 20(d) is also not applicable since Applicant has not “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” I conclude that Applicant has not mitigated the financial concerns of the Government.

Guideline E, Personal Conduct

With respect to Guideline E, I find that because Applicant learned of his overdue debts and his financial difficulties, when he moved to dismiss the bankruptcy in 2005, Applicant should have included these overdue debts and liens, when he completed his SCA. Because of his lack of honesty and candor regarding very clearly written questions, I find that Applicant did intend to mislead the Government.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation’s secrets. If such an individual intentionally falsifies material facts, it is extremely difficult to conclude that he nevertheless possesses the judgment, and honesty necessary for an individual given a clearance.

In reviewing the disqualifying conditions under Guideline E, I conclude that because of Applicant’s “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” that ¶ 16(a) applies against Applicant. I find no mitigating conditions can be applied. I therefore, resolve Guideline E against 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 disqualifying conditions apply and the mitigating conditions do not apply, 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
Subparagraphs 1.a.- 1.q.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.-2.f.:	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