



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 09-02559
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

November 30, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On May 27, 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On June 9, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on July 13, 2010. DOHA issued a notice of hearing on July 29, 2010, and I convened the hearing as scheduled on August 24, 2010. The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Exhibit A at the time of hearing, which was also admitted without objection. DOHA received the transcript of the hearing (Tr) on August 13, 2010. I granted Applicant's request to keep the record open until September 7, 2010, to submit additional documents, and several additional documents were received, which have

been identified collectively and entered into evidence as Exhibit B. 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

In his RSOR, Applicant admitted all of the SOR allegations, 1.a. through 1.c. 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 38 years old. He has been married three times and has two children. Applicant is employed by a defense contractor as an electronic technician, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists three allegations 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 \$518. Applicant testified that he attempted to negotiate a settlement with the creditors of these debts but he was not successful. The debts have been included in the bankruptcy that was filed on August 13, 2010. Applicant testified that it took him so long to file for bankruptcy because he was extremely reluctant to do so. (Tr at 39 – 41.)

1.b. This overdue debt is cited in the SOR in the amount of \$18,799. This debt has been included in the bankruptcy.

1.c. This overdue debt is cited in the SOR in the amount of \$693. This debt has been included in the bankruptcy.

Applicant testified that his financial difficulties occurred when he started a full-time landscaping business in 2004 or 2005, a business that he had worked part-time previously, while he worked full-time for a defense contractor. When the economy entered the recession, his business suffered a serious downturn. He testified that in 2006 his income was \$63,000, and in 2007 his income reached approximately \$120,000. Ultimately, several of his major business clients were severely impacted by the recession, and he lost their business, which severely damaged his company. He still operates the business, but again on a part-time basis. (Tr at 32 – 36.) Applicant also added that he was going through a difficult divorce at the same time. Finally, he had a rental property with a mortgage that he could not pay after his tenant suddenly vacated the premises, and it had to be sold in a short sale. The short sale resulted in an

additional payment that had to be made to the state tax board, and Applicant has worked out a payment plan to the IRS. (Tr at 37 – 38, 44.)

Applicant testified that before he filed for bankruptcy, he engaged the services of two different debt consolidation companies, but he could not successfully resolve his overdue debts. He believed that he had no other option but to file bankruptcy. (Tr at 39 – 42.) Applicant also reiterated that his debts were not because he spent money frivolously on unnecessary products, but rather on trucks and other construction equipment that he used for his business. He also testified that before the downturn in his business, his credit scores had been excellent. (Tr at 42 – 43.)

Mitigation

Applicant offered into evidence several post hearing documents in Exhibit B. These included his bankruptcy petition, which confirmed that a Chapter 7 Bankruptcy had been filed for Applicant's case on August 13, 2010, by his attorney, and that a meeting of creditors was to be set on September 23, 2010.

In Exhibit B, Applicant also introduced a monthly personal financial statement, which indicated that his total monthly net income was \$4,468, and his monthly expenses were \$3,750, leaving a net remainder of \$718 a month. Also, Applicant submitted the documentation from both debt consolidation companies that he had engaged, establishing his attempts to resolve his overdue debts. Exhibit B also includes the documentation to show that Applicant is paying off his debt to the state tax board.

Applicant submitted a positive character letter in Exhibit A from his current supervisor. He was described as a "trustworthy employee" and "a very responsible individual and has always been dependable in all that he does." Five additional positive character letters were offered in Exhibit B. These came from a 10 year coworker, who is now a supervisor; his former wife, who is now a good friend; another friend; and one of the clients of his landscaping business. He was described as "professional and dependable and knowledgeable in the profession," "a good man and has always shown strong character," "is an amazing provider and a loyal friend," and "very professional and dependable worker, and a good example for everyone."

Finally, in Exhibit B, Applicant did submit the documentation confirming that his dissolution of marriage occurred on October 16, 2006, and which Applicant testified was also part of the reason for his financial difficulties.

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 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 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 downturn of his business, and also his divorce and the loss of a tenant in his rental property. I find that Applicant has acted responsibly, as he first consulted with two different credit consolidating companies, and when he was unable to resolve his debt, he used the legal remedy of bankruptcy. Therefore, I find that this potentially mitigating condition is a factor for consideration in this case.

AG ¶ 20 (d) is also applicable since Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." I find that this mitigating condition is also a factor for consideration in this case.

I conclude that Applicant is in the process of resolving his overdue debt, and he has established that he will be able to maintain more financial stability in the future. 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.

