



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



In the matter of:)
)
-----) ISCR Case No. 09-03423
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

October 6, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On November 2, 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 December 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 January 19, 2010. DOHA issued a notice of hearing on March 2, 2010, and I convened the hearing as scheduled on April 6, 2010. 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 April 20, 2010, to submit additional documents. He timely submitted nine pages of

additional documents, which have been identified collectively and entered into evidence as Exhibit E. DOHA received the transcript of the hearing (Tr) on April 19, 2010. 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 49 years old. He is married, and he has no children. He served in the United States Navy from 1980 to 1983 and received 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 18 allegations (1.a. through 1.r.) regarding financial difficulties of overdue debts under Adjudicative Guideline F. All of the debts were established by Government Exhibits 3 through 8, and Applicant admitted SOR allegations 1.a. through 1.r. in his RSOR. 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 \$3,165. Applicant testified that this debt is still unpaid. (Tr at 30.) In his post hearing submission, Exhibit E, Applicant averred that he has made arrangements to pay \$100 month, starting April 30, 2010, and he is scheduled to pay off this debt by March 2013.

1.b. This overdue debt is cited in the SOR in the amount of \$4,437. Applicant testified that this debt is still unpaid, but he has been in contact with the creditor, and he is waiting until he has saved the full amount before he can pay off this debt. (Tr at 31-32.)

1.c. This overdue debt is cited in the SOR in the amount of \$614. Applicant testified that he has contacted the creditor of this debt and he will make two payments totaling \$512 on April 16 and May 13, 2010 to resolve this debt. (Tr at 32-35.) In Exhibit E, Applicant reiterates that he is scheduled to make two payment of \$256, the first on April 16 and the final one on May 13, at which time the debt will be paid in full.

1.d. This overdue debt is cited in the SOR in the amount of \$192. Applicant testified that he has agreed to make three payments of \$76 each, one of which has already been made. (Tr at 35.) Exhibit E included a letter from this creditor, stating that as of April 14, 2010, this debt has been paid in full.

1.e. This overdue debt is cited in the SOR in the amount of \$192. Applicant testified that this debt had not been resolved at the time of the hearing. (Tr at 36.) In

Exhibit E, Applicant states that he is scheduled to make two payments of \$225 each, the first on April 30 and the final one on May 28, 2010, at which time the debt will be paid in full.

1.f. This overdue debt is cited in the SOR in the amount of \$977. Applicant testified that by the time of the hearing, he had paid \$587 on this debt. (Tr at 37-38.) In Exhibit E, Applicant states that he is scheduled to make a payment of \$200 on April 30 and a payment of \$190 on May 30, 2010, at which time the debt will be paid in full.

1.g. This overdue debt is cited in the SOR in the amount of \$212. Applicant testified that this debt was not resolved at the time of the hearing. (Tr at 39.) In Exhibit E, Applicant states that he made a payment of \$222.30 on April 14, 2010, and the debt is paid in full.

1.h. This overdue debt is cited in the SOR in the amount of \$333. Applicant testified that by the time of the hearing, he had paid \$111 on this debt and had two more payments of \$111 scheduled to be made. (Tr at 40.)

1.i. This overdue debt is cited in the SOR in the amount of \$235. In Exhibit E, Applicant states that he is scheduled to make a payment of \$235 on May 14, 2010, at which time the debt will be paid in full.

1.j. This overdue debt is cited in the SOR in the amount of \$1,204. Applicant testified that he made an arrangement with this creditor to make monthly payments of \$300 a month, beginning on May 28, 2010, until the debt is resolved. (Tr at 41-42.) In Exhibit E, Applicant states that this debt will be paid in full by November 2010. There is also a letter from this creditor in Exhibit D, confirming this payment plan.

1.k. This overdue debt is cited in the SOR in the amount of \$306. Applicant testified that he had made arrangements to pay \$208.75 on April 16, 2010, to resolve this debt. (Tr at 43.) In Exhibit E, Applicant states that he has paid this debt in full.

1.l. This overdue debt is cited in the SOR in the amount of \$410. Applicant testified that this debt is the same as 1.k., above. (Tr at 43-44.) This debt has now been resolved.

1.m. This overdue debt is cited in the SOR in the amount of \$149. Applicant testified that this debt was paid in full for \$100 on April 2, 2010, and this is confirmed in Exhibit E. (Tr at 44.)

1.n. This overdue debt is cited in the SOR in the amount of \$580. Applicant testified that he made an arrangement with this creditor to make one payment of \$105 on April 30, 2010, and two monthly payments of \$245, the first on May 14, 2010, and the final one on May 28, 2010, at which time the debt will be resolved. (Tr at 45-46.) This is confirmed in Exhibit E.

1.o. This overdue debt is cited in the SOR in the amount of \$5,822. Applicant testified that he made an arrangement with this creditor to make monthly payments of \$150, beginning May 28, 2010. In Exhibit E, Applicant avers that he will make 38 monthly payments of \$150, and the debt will be resolved in July 2013.

1.p. This overdue debt is cited in the SOR in the amount of \$88. Applicant testified that the total amount of the actual debt is \$722, and the creditor will accept \$577.48 in settlement. He has agreed to make three payments of \$192.47, on April 16, April 30, and May 20, 2010. (Tr at 48.) This is confirmed in Exhibit E.

1.q. This overdue debt is cited in the SOR in the amount of \$2,000. Applicant testified that he had not been aware of this debt, so he had not contacted the creditor by the time of the hearing. (Tr at 48-49.) In Exhibit E, Applicant states that this creditor will not accept payments, so he is putting aside money to be able to settle at one time.

1.r. This overdue debt is cited in the SOR in the amount of \$253. Applicant testified that he has made a payment of \$126.60 to settle this debt. (Tr at 49.) There is also a letter from this creditor in Exhibit E, confirming this settlement.

Applicant testified that most of his financial difficulties began in 2004, after he became unemployed from a job that he had held for 18½ years. He had been a mechanic for an airline that began making layoffs. Also, because of physical infirmities, his wife was unable to perform her work as a nurse. She is pursuing a non-nursing position.

Applicant recently began working a second full-time job, and with that extra income, he has been able to begin resolving his debts. He took the second job only so he could have sufficient income to resolve his overdue debts. A Personal Financial Statement, created by Applicant and submitted in Exhibit E, shows his monthly income is \$7,150 and his debits are \$5,202, leaving him with a monthly surplus of \$1,948.

Paragraph 2 Guideline E, Personal Conduct

2.a. Applicant executed a Security Clearance Application (SCA) on February 21, 2009. (Exhibit 2.) The SOR alleges that Applicant failed to provide a truthful and candid answer to Question 28a. of the SCA which 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 subparagraph 1.a through 1.r. of the SOR. Applicant testified that he was not aware of the overdue debts when he completed the SCA, as he did not have a copy of his credit report, and he "just didn't consider the question thoroughly enough." (Tr at 50.)

Applicant also testified that he believed the Government would thoroughly investigate his background, so he never had any intention to deceive the Government. Finally, Applicant did reveal that he had received a recent judgement against him on his SCA. He did this because it was recent, and he realized that should be included, but if

he was trying to fool the Government, he would not have included this on the SCA. (Tr at 65-68.)

Mitigation

Applicant submitted his most recent Employee Performance Evaluation in Exhibit E. In 12 of 13 evaluation factors, Applicant received a rating of “Excellent” and the other rating was “Above Average.” His overall performance rating was “Excellent.”

Applicant also submitted a very positive letter from the site manager of his current employer. He stated that Applicant “is a tremendous asset for our company and has my highest recommendation.” (Exhibit B.)

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 primarily after loss of employment from a company for which he had worked for more than 18 years. Applicant’s wife also was unable to be employed as a nurse because of her physical infirmities.

I do find that Applicant has acted responsibly as he has now taken on a second full time job, contacted the creditors and either paid off the overdue debts or begun a payment plan to pay off most of his debts. Since many of his overdue debts have been resolved or are in the process of being resolved, I find that this 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 conclude that Applicant has mitigated the financial concerns of the Government.

Guideline E, Personal Conduct

With respect to Guideline E, I find that Applicant was not attempting to mislead the Government with regards to his overdue debts. Rather he answered the question to the best of his knowledge.

In reviewing the disqualifying conditions under Guideline E, I conclude that ¶ 16(a) “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” does not apply against Applicant. 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, and considering his positive evaluation and letter of recommendation, 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.r.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 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