



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03730
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

October 12, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On October 20, 2009, 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 November 10, 2009, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on January 13, 2010. DOHA issued a notice of hearing on March 2, 2010, and I convened the hearing as scheduled on March 18, 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 April 5, 2010. I granted Applicant's request to keep the record open until April 1, 2010, to submit additional

documents, but no additional documents were received. 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

In his RSOR, Applicant admitted all of the SOR allegations 1.a. through 1.f. 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 46 years old. He is married and has two children. 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 six allegations (1.a. through 1.f.) 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 \$24,880. Applicant testified that this credit card debt has been referred to a collection agency, and he estimated that he has paid \$1,000 toward this debt. He indicated that he made three payments of different amounts, but he stopped making payment, because he did not have sufficient funds. Since he has two debts to the same credit card creditor, this debt and 1.d., below, he was not sure if the amount he paid went toward this debt or to 1.d. (Tr at 29-32.) No evidence was offered to show that this debt has been resolved or reduced.

1.b. This overdue debt is cited in the SOR in the amount of \$7,825. This credit card debt has not been resolved or reduced. (RSOR and Tr at 32-33.)

1.c. This overdue debt is cited in the SOR in the amount of \$2,261. Applicant testified that he had made three or four payments of \$50 each on this gas card debt. He stopped making payments because of lack of funds. (Tr at 33-35.) No evidence was offered to show that this debt has been resolved or reduced.

1.d. This overdue debt is cited in the SOR in the amount of \$22,603. Applicant was not sure if the payments discussed in 1.a., above, were applied to this debt or to 1.a. (Tr at 35-36.) The record was left open after the hearing to allow Applicant to submit any documentation showing the status of this debt, but no evidence was offered to show that this debt has been resolved or reduced.

1.e. This overdue debt is cited in the SOR in the amount of \$8,967. Applicant testified that he had made three or four payments of \$50 or \$100 on this credit card debt. (Tr at 36-37.) No evidence was offered to show that this debt has been resolved or reduced.

1.f. This overdue debt is cited in the SOR in the amount of \$14,026. Applicant testified that this debt is for his home loan. He has been trying to get a loan modification, but at the time of the hearing the loan modification had not been approved. (Tr at 37-4.) No evidence was offered to show that this debt has been resolved or reduced.

Applicant provided two reasons for his financial difficulties. He testified that, in addition to his employment for a defense contractor, he owns a property management company that was previously owned by his father-in-law. The business has been hurt as it has lost a significant number of the buildings that they were managing. The company's income was reduced by approximately \$8,000 a month. He also was unable to work for a two month period in 2008, because he had a tumor in his right sinus that gave him vertigo, and which had to be removed. (Tr at 42-47.)

He testified that he and his wife have consulted with an attorney, who recommended that they take credit counseling classes, but they have not yet found the time to take them. (Tr at 64.)

Mitigation

Applicant submitted three positive character letters in Exhibit A, including one from his current supervisor, one from his Pastor, and the third from a Deacon of his church. He was described as, "above reproach in terms of loyalty, honesty and integrity." He was also called "a man of conviction and honor."

Applicant also indicated that he now has a real estate license in an attempt to earn more income, and thereafter pay off some of his debt. He also testified that he only has one credit card at this time, a company card that has to be paid off monthly. Finally, he averred that he is current on his most recent monthly bills, such as those for his cellular phone, cable, internet, water, electric and trash services. (Tr at 67-68.)

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 infirmity that left him unable to work for two months. However, since no evidence was introduced to establish that he has repaid or resolved any of his considerable overdue debt, I cannot find that he has acted responsibly. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case.

I conclude that until Applicant is able to significantly reduce his overdue debt, and show that he can maintain more financial stability, he has not 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. Based on all of the reasons cited

above as to why the Disqualifying Conditions apply and no Mitigating Condition applies, I find that the record evidence leaves me with 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 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 through 1.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