



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 09-03936
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

March 31, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On September 18, 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 revised 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 October 19, 2009, Applicant replied to the SOR (RSOR) in writing, and requested a hearing before an Administrative Judge. I received the case assignment on December 1, 2009. DOHA issued a notice of hearing on January 14, 2010, and I convened the hearing as scheduled on February 18, 2010. The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted one exhibit at the time of hearing, (Exhibit A), which was also admitted without objection. DOHA received the transcript of the hearing (Tr) on March 2,

2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his RSOR, Applicant admitted in part SOR allegation 1.a., with an explanation. 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 55 years old. He is currently married and has five children. He received a Bachelor of Science degree in Mechanical Engineering and a Masters Degree in Engineering. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

The SOR lists one allegation (1.a.) regarding financial difficulties under Adjudicative Guideline F, for an overdue debt. The debt will be discussed below:

1.a. It is alleged in the SOR that Applicant is indebted, for an account that has been charged off, in the amount of \$18,000. Applicant testified that this debt is for an account that he opened with a credit union in 2003. He stated that he charged very few items on the charge card with this account, but that he disputed the charges on the account.

Applicant testified that he received a wall unit in 2003 that was delivered in unacceptable condition. He requested that the piece be returned by the delivery company, and he informed the credit union of the status of the faulty delivery. While the piece was returned, the merchant never informed the credit union, which continued to show the debt of \$1,400 was still due and owing, even though the item had been returned.

While this bill continued to grow, he continued making payments on his account so that he would remain current. Applicant testified that ultimately, a representative from the credit union realized their mistake, and informed Applicant that all he owed on this debt was \$182.21 (Tr at 29-30). Among the documents included in Exhibit 2 is a letter from Applicant to the credit union, dated February 20, 2009, indicating that both parties have reached an agreement, and the credit union has accepted the payment from Applicant, as an accord and satisfaction in full for this debt. Exhibit 2 also included a copy of the check in the amount of \$182.21 from Applicant.

Applicant submitted a letter from the Senior Vice President of the credit union, dated February 18, 2010, (Exhibit A), in which she agreed "to update the account to remove the credit history" so that the credit report would not show that there had been a past due charged off account.

Finally, Applicant testified that he is not past due on any other account. Exhibit 7, the most recent credit report, shows one medical bill of \$76 that is unpaid. Applicant testified that this bill, for a co-payment to his doctor, has been paid (Tr at 38-39).

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 do not find that either of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant only accumulated one delinquent debt, and that was clearly in error. I find that Applicant has acted responsibly by disputing this debt, and ultimately resolving it.

Since Applicant has resolved his overdue debt problem, and all of his other debts are current, I conclude that 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. Based on all of the reasons cited above as to why no Disqualifying Condition applies, I find that the record evidence leaves me with no 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.:	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