



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-04186
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

November 18, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On October 30, 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 January 2, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on March 9, 2010. DOHA issued a notice of hearing on April 2, 2010, and I convened the hearing as scheduled on May 5, 2010. The Government offered Exhibits 1 through 6, 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. One additional witness testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on May 11, 2010. I granted Applicant's request to keep the

record open until June 4, 2010, to submit additional documents, and additional documents that were received have been identified and entered into evidence collectively without objection as Exhibit E. Based upon a review of the case file, pleadings, exhibits, and the testimony of Applicant and his witness, 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.ff. 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 41 years old. He is married and has four sons. He served in the United States Navy from 1986 to 2006, and he 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 32 allegations (1.a. through 1.ff.) regarding overdue debts 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 \$383. At the hearing, Applicant testified that this debt has been paid. (Tr at 30-33.) However, in his post hearing submission (Exhibit E), he indicated that this debt has not yet been paid, but it will be paid in the future. I do not find that this debt has yet been resolved or reduced.

1.b. This overdue debt is cited in the SOR in the amount of \$130. Applicant testified that this debt has been paid. (Tr at 33.) Exhibit E includes a postal money order from Applicant to this creditor in the amount of \$137, dated July 29, 2009. I find this debt has been paid.

1.c. This overdue debt is cited in the SOR in the amount of \$920. Applicant testified that this debt was not paid, but it was removed from his credit report. He averred that he had been disputing this debt with the creditor, and he did not believe it was his debt. (Tr at 33-35.) However, since no evidence was offered to show that this debt was removed because the creditor agreed with Applicant's dispute, I cannot find that the debt has been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$475. Applicant testified that this debt was not paid, but he intends to pay it in the future. (Tr at 36-37.)

1.e. This overdue debt is cited in the SOR in the amount of \$600. Applicant testified that this debt has been paid. (Tr at 37-38.) Exhibit E includes a letter from this creditor, dated September 25, 2009, showing this debt has been paid. I find this debt has been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$326. Applicant testified that this debt was not paid, but he intends to pay it in the future. (Tr at 38-39.)

1.g. This overdue debt is cited in the SOR in the amount of \$315. Applicant testified that this debt was not paid, but he intends to pay it in the future. (Tr at 39-40.)

1.h. This overdue debt is cited in the SOR in the amount of \$222. Applicant testified that this debt has been paid. (Tr at 40.) Exhibit E includes a report showing that all three debts to this creditor have been paid. I find this debt has been resolved.

1.i. This overdue debt is cited in the SOR in the amount of \$58. Applicant testified that this debt was not paid, but it was removed from his credit report. (Tr at 40-41.) He believed it was because this creditor was found to be charging unreasonable late fees and was ordered to cancel these charges. He had no documentation to establish this assertion, so I can not find that this debt has been resolved.

1.j. This overdue debt is cited in the SOR in the amount of \$49. Applicant testified that this debt has been paid. (Tr at 40.) Exhibit E includes a report showing that all three debts to this creditor have been paid. I find this debt has been resolved.

1.k. This overdue debt is cited in the SOR in the amount of \$337. Applicant testified that this debt has been paid. (Tr at 42.) Exhibit E includes a letter from this creditor, dated November 11, 2009, showing this debt has been paid. I find this debt has been resolved.

1.l. This overdue debt is cited in the SOR in the amount of \$4,192. Applicant testified that this debt and 1.m., below, are for college loans, and he has paid 10 payments of \$250 each towards these debts from August 2009 through April 2010. (Tr at 43-44.) Exhibit D includes copies of the checks made by Applicant. I find that Applicant has reduced 1.l. and 1.m. significantly.

1.m. This overdue debt is cited in the SOR in the amount of \$4,942. This is reviewed with 1.l., above.

1.n. This overdue debt is cited in the SOR in the amount of \$1,185. Applicant testified that he has paid \$1,800 towards this debt, and it has been resolved. (Tr at 45.) Exhibit E includes a report showing that five payments have been made to this creditor. I find this debt has been resolved.

1.o. This overdue debt is cited in the SOR in the amount of \$9,353. Applicant testified that this debt was not paid, but he intends to pay it in the future. (Tr at 45.)

1.p. This overdue debt is cited in the SOR in the amount of \$4,872. Applicant testified that this debt was not paid, but he intends to pay it in the future. (Tr at 45-46.)

1.q. This overdue debt is cited in the SOR in the amount of \$9,354. Applicant testified that this debt has been paid. (Tr at 46.) Exhibit E includes a letter from this creditor, dated May 25, 2010, showing that \$5,005 was paid toward this debt, with \$0 balance. I find this debt has been resolved.

1.r. This overdue debt is cited in the SOR in the amount of \$250. Applicant testified that this debt was dropped from his credit report, although he did not know why this was done. (Tr at 46.) In Exhibit E, Applicant indicated that this debt has not been paid, but he intends to pay it in the future.

1.s. This overdue debt is cited in the SOR in the amount of \$90. Applicant testified that this debt has been paid. (Tr at 47.) Exhibit E includes a report showing that three payments of \$13.15, \$19.46, and \$28 were paid to this creditor. I find this debt has been resolved.

1.t. This overdue debt is cited in the SOR in the amount of \$28. Applicant testified that this debt has been paid. (Tr at 47.) Exhibit E includes a report showing that \$28 was paid to this creditor. I find this debt has been resolved.

1.u. This overdue debt is cited in the SOR in the amount of \$57. Applicant testified that this debt has been paid. (Tr at 47.) Exhibit E includes a letter from this creditor, dated December 18, 2010, showing that this debt had a \$0 balance. I find this debt has been resolved.

1.v. This overdue debt is cited in the SOR in the amount of \$2,064. Applicant testified that this debt was not paid, and despite the fact that it has dropped off his credit report because it is an old debt, he intends to pay it in the future. (Tr at 48-49.)

1.w. This overdue debt is cited in the SOR in the amount of \$118. Applicant testified that this debt has been paid. (Tr at 49.) Exhibit E includes a letter from this creditor, showing that \$118 was paid toward this debt, with \$0 balance. I find this debt has been resolved.

1.x. This overdue debt is cited in the SOR in the amount of \$158. Applicant testified that this debt has been paid, although he was not certain to whom the debt was owed. He offered no evidence to establish that this debt has been resolved.

1.y. This overdue debt is cited in the SOR in the amount of \$698. Applicant testified that this debt has been paid. (Tr at 51.) Exhibit E includes a letter from this creditor, dated November 11, 2009, showing that this debt is satisfied in full. I find this debt has been resolved.

1.z. This overdue debt is cited in the SOR in the amount of \$303. Applicant testified that this debt was dropped from his credit report, although he did not know why this was done. (Tr at 51.) In Exhibit E, Applicant indicated that this debt has not been paid, but he intends to pay it in the future.

1.aa. This overdue debt is cited in the SOR in the amount of \$4,300. Applicant testified that this debt is for a military credit card, and it is being paid by allotment in the amount of \$107 a month from his retirement pay. (Tr at 51-52.) Exhibit E includes a document confirming that an allotment of \$107.74 is being withdrawn to pay this creditor.

1.bb. This overdue debt is cited in the SOR in the amount of \$796. Applicant testified that this debt was dropped from his credit report, although he did not know why this was done. (Tr at 52-53.) In Exhibit E, Applicant indicated that this debt has not been paid, but he intends to pay it in the future.

1.cc. This overdue debt is cited in the SOR in the amount of \$4,000. Applicant testified that this debt and 1.dd., below are the same debts as 1.l and 1.m., which have been reviewed above, and appears to be the same debts. (Tr at 53-54.)

1.dd. This overdue debt is cited in the SOR in the amount of \$3,500. This is reviewed with 1.cc., above and appears to be the same debt.

1.ee. This overdue debt is cited in the SOR in the amount of \$768. Applicant testified that this debt was dropped from his credit report, although he did not know why this was done. (Tr at 54.) In Exhibit E, Applicant indicated that this debt has not been paid, but he intends to pay it in the future.

1.ff. This overdue debt is cited in the SOR in the amount of \$5,000. Applicant testified that this debt has been paid in full by allotment. (Tr at 54-55.) Exhibit E includes a document confirming that an allotment had been withdrawn to pay this creditor until the debt was \$0.

Applicant testified that before he retired from the Navy, he did not have all of his overdue debt. However, in 2006, when he retired, he moved to live closer to his mother, and he could not find a full-time job for six months. He had a job that only paid him \$10 an hour, which did not provide him with enough money to pay his bills. He ultimately was laid off from two jobs and had two moves to different cities while searching for employment, all of which contributed to his financial difficulties. He also rented three homes, and the owners were all foreclosed on, which required additional moves. He has had his current job since June 2007, and in the last year he has been able to start paying off his debts. (Tr at 42-47.) He estimated that he has been able to reduce his debt from between \$30,000 to \$40,000 down to approximately \$14,000.

Mitigation

Applicant had one additional witness testify on his behalf. This co-worker, who is a retired, former member of the United States Marine Corps, who had served for 24 years and has known Applicant for one year, testified that he would trust Applicant with his life. (Tr at 80-82.)

As part of Exhibit 2, Applicant attached his DD Form 214. The following are some of the medals and awards he earned during his service in the Navy, some of which have been included in Exhibit E: seven Navy/Marine Corps Achievement Medals, the Navy Unit Commendation, the Meritorious Unit Commendation, three Navy "E" Ribbons, six Good Conduct Medals, two National Defense Service Medals, the Armed Forces Expeditionary Medal, as well as several other honors.

Applicant also submitted his Evaluation Reports and Counseling Records during his service in the Navy. (Exhibit E.) He continuously received excellent ratings, and he was described as a "highly skilled technician and extremely dedicated professional. He possesses the character, initiative and resourcefulness to accomplish the most demanding tasks. Expresses a willingness to accept increased responsibilities with a 'can do attitude.' A true team player committed to maintaining the highest state of combat readiness."

As part of Exhibit E, Applicant also submitted three positive character letters, including one from his current supervisor, one from his past supervisor, and a third one from a co-worker. He was described by his former supervisor, a United States Marine Corps Master Sergeant, as being "of good character, reliable, knowledgeable and hard working, His work ethic is outstanding and he has always acted in a professional manner, above reproach in terms of loyalty, honesty and integrity." His current supervisor stated that Applicant "is a very loyal, trusted and hard working individual ."

Finally, at my request, Applicant submitted a current personal financial statement, which shows that Applicant has a monthly net income of \$6,241 and estimated monthly expenses of \$4,172, leaving a surplus of \$2,069 per month. (Exhibit E.)

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 has 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 periods of unemployment and underemployment after he left the Navy, together with the costs of moving to find employment. I find that he has acted responsibly, since he has been paying off a significant amount of his debts as his new employment gradually increased his income. Therefore, 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 find that this mitigating condition is also a factor for consideration in this case.

I conclude that Applicant has significantly reduced his overdue debt, and he has shown that he can maintain financial stability. 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.

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, considered together with Applicant's honorable military service to the country and the very positive letters of recommendation and evaluations, 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 through 1.ff.: 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