



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-05416
SSN: -----)	
Applicant for Security Clearance)	

Appearances

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

January 06, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On April 23, 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 May 25, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on June 17, 2010. DOHA issued a first notice of hearing on July 29, 2010, and the hearing was scheduled for August 24, 2010. Because of previous travel plans by Applicant, the hearing was continued. A second notice of hearing was issued on October 29, 2010, and I convened the hearing on November 15, 2010. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through E, at the time of hearing, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on November 29,

2010. I granted Applicant's request to keep the record open until November 29, 2010, to submit additional documents. Thereafter, I granted Applicant's request that the record remain open until December 13, 2010. Additional documents were received timely, and have been identified and entered into evidence without objection as Exhibit F. 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 45 years old. He is married, and he has two daughters. He earned a Master of Business Administration degree and a Bachelor of Science Degree. Applicant is employed as a Senior Financial Analyst 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 1 allegation (1.a.) regarding an overdue debt under Adjudicative Guideline F, and it will be discussed below:

1.a. This overdue debt is cited in the SOR for an account placed for collection in the amount of \$16,266. In his RSOR, Applicant admitted that this debt was listed on his credit report, but claimed that it was not his debt, and that he has disputed this debt with Equifax credit reporting agency. He also stated that he had been in contact with the bank that is the creditor, who confirmed that this debt must be the result of identity theft.

At the hearing, Applicant testified that he has reviewed his records, but did not see a credit card account with the account number that was listed on the credit report, although he has had a credit card, his current mortgage and line of credit with the bank that is this creditor. He disputes that the payment was for this debt. (Tr at 31-34.) The creditor sent him a letter, dated July 7, 2010, insisting that this debt was incurred by Applicant, since a check that he sent them for \$92.18 on January 19, 2005, was for this account. Applicant followed up with a letter, dated July 28, 2010, to this creditor showing that the check had a different account number and was for a different debt. (Exhibit B.) Exhibit A consists of the letter from the creditor, dated September 10, 2010, in which they still insist that Applicant owes this debt, although they again do not respond to the request of Applicant to specifically show him how a payment on a different account number establishes that he owes this debt. In the final correspondence from Applicant, dated November 15, 2010, he asks one more time for the bank to give him some proof how a payment for one account number can show that he owes another debt. (Exhibit A.)

Applicant averred that if the creditor could establish that this was his debt, he certainly would be willing to resolve it. (Tr at 34.) In his RSOR, Applicant listed his

financial assets, which totaled \$240,400 to establish that he had the means to pay off this debt.

Applicant testified that he was not aware of this alleged overdue debt until he applied for the security clearance, since he had not been checking his credit report and he did not have the need to request additional funds from this bank. Since he became aware of the debt, he has contacted several collection agencies that purchased the debt, before contacting the bank that had the underlying debt. (Tr at 35-37.)

Applicant testified that he has had his mortgage and line of credit with the same bank that is the creditor of the debt in question since 2003, and he is current on both of those debts. He also had a credit card with this bank, but he no longer uses it, and it has a balance of \$0. With the exception of this debt, all of his debts have been paid in a timely manner. In all of Applicant's credit reports it only shows that this one debt is overdue. (Exhibits 2-5.) Finally, Applicant also testified that he has filed a police report because he believes that this debt resulted from credit card fraud. (Tr at 45-52 .)

Mitigation

As part of Exhibit F, Applicant submitted two positive character letters. The first is from a Director of his employer, who is a retired Lieutenant Colonel in the United States Air Force. He has known and worked with Applicant for the last 5 years, and he described him as "a trustworthy individual who not only follows thru on his word but also maintains the level of confidence required for a security clearance." The other letter is from the Finance Manager of his employer, who has also known him for five years. He also described Applicant in very positive terms. Applicant also submitted five Certificates of Achievement that he has earned for excellent performance with his present employer. (Exhibit F.)

Exhibit F also contained the documentation showing that Applicant had disputed the debt with a credit reporting agency. Finally, Applicant submitted his transcripts confirming that he received his Master of Business Administration with an excellent grade point average in 1995.

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. While these disqualifying conditions could initially be argued to apply, I find that they are not applicable for the following reasons:

After reviewing all of Applicant’s credit reports, I find Applicant has only one overdue debt, which he strongly believes is not his. He credibly argues that, while he had a credit card with this creditor, it had a \$0 balance when he stopped using it, and the account number was different than the one that is on the credit report. When he became aware of this debt, he acted responsibly. First he contacted several collection agencies, until he finally reached the original creditor, which is the same bank that has his mortgage and line of credit. He disputed this debt with the bank and asked for any proof that this was his debt, which he never received. He also disputed this debt with the credit reporting agencies, and because he believed this debt was the result of identity theft, he even contacted the police and filed a report. I find that it has not been proven that this debt is owed by Applicant. However, Applicant averred that if it was ever established that it was his debt, which again he very strongly disputes, he has the means and would pay off the debt.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties: AG ¶ 20(d) is applicable since Applicant has “initiated a good-faith effort” to resolve this debt. AG ¶ 20(e) is also applicable since Applicant “has a reasonable basis to dispute the legitimacy of the past-due debt,” and he has provided “evidence of actions to resolve the issue.” I find that these mitigating conditions are factors for consideration in this case, and Applicant 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.

