



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



In the matter of:)	
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-----)	ISCR Case No. 09-05740
)	
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Applicant for Security Clearance)	

Appearances

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

June 08, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On November 22, 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), effective within the Department of Defense for SORs issued after September 1, 2006.

On December 23, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on February 4, 2011. DOHA issued a notice of hearing on March 10, 2011, and I convened the hearing as scheduled on March 29, 2011. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on his own behalf and submitted no exhibits at the time of hearing. DOHA received the transcript of the hearing (Tr) on April 5, 2011. I granted Applicant's request to keep the record open until May 2, 2011, to submit additional documents, and nine additional pages of documents

that were received, have been identified and entered into evidence without objection as Exhibits A through D. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Findings of Fact

In his RSOR, Applicant denied all of the SOR allegations 1.a. through 1.e. 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 40 years old. He is currently married, and he has two daughters. Applicant served in the United States Navy from 1988 to 2008. 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 five allegations (1.a. through e.) regarding overdue debts under Adjudicative Guideline F. As reviewed above, Applicant denied all of the allegations 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 \$15,460. At the hearing, Applicant reiterated that none of the five debts listed on the SOR were incurred by him. He testified that for the 20 years that he was in the Navy and right up to the present time, he has never incurred overdue debt. He averred that he has never had any of the credit cards that are the basis for all of these debts. About these cards he stated, "Never applied for those, never seen 'em, never received any collection notice, any bills." He first became aware of these debt, during the period when he had an interview with a Government investigator during a background investigation for a security clearance. He did explain that he had a credit card from one of the companies listed as a creditor on the SOR, but that was in the early 1990s, and it had been paid off and closed out long ago. (Tr at 54-57.) Applicant also testified that he spoke to his wife, and she told him that she had not incurred these debts. (Tr at 36-37.)

1.b. This overdue debt is cited in the SOR in the amount of \$27,159. This appears to be a second debt from the same creditor as 1.a., above. Applicant denied that he ever used a credit card from this company or incurred any debt to this creditor.

1.c. This overdue debt is cited in the SOR in the amount of \$13,288. Applicant denied that he ever had a credit card from this company or incurred any debt to this creditor.

1.d. This overdue debt is cited in the SOR in the amount of \$4,728. This debt is listed as originating from a retail store. Applicant testified that he never opened an account at this store or purchased anything there. (Tr at 26.)

1.e. This overdue debt is cited in the SOR in the amount of \$15,082. Applicant denied that he ever had a credit card from this company or incurred any debt to this creditor.

Applicant testified that when he learned of these accounts in 2007, he called on three occasions to TransUnion to dispute the debts. He was informed that a representative of TransUnion would review the debts and call him back, but he never received a response. This was the only action he took to dispute the bills until he wrote the challenges that are Exhibit A. When he was questioned about why he was not more aggressive in disputing these bills, he testified that he believed once he retired from the Navy he would not need a security clearance any longer, and he also believed that since he had raised the issue with a credit reporting agency, that eventually it would be resolved.

Mitigation

Among the post hearing documents submitted by Applicant was a Credit Report Dispute form, in which Applicant disputed all of the debts listed on the SOR to all three credit bureaus. He wrote that he never opened up any of these accounts. (Exhibit A.) Applicant also submitted a letter from his wife, in which she wrote that she is not aware of the accounts listed on the SOR, nor is she responsible for opening up the accounts in her husband's name. (Exhibit C.)

Additionally, Applicant submitted two positive character letters. One letter was from a 14 year friend of Applicant, who described Applicant as "reliable, trustworthy and financially responsible." The second letter was from Applicant's Chief Petty Officer from 2006 to 2009 aboard a ship in the United States Navy. He wrote that Applicant's "performance was exceptional and his leadership skills were that of a seasoned petty Officer. . . He held a Top Secret clearance and never had any disciplinary issues. His character and personality is nothing short of outstanding." (Exhibit D.)

Applicant also forwarded his Evaluation Report & Counseling Record for 2003 and 2004. He was described "as an absolute top performer in every respect . . . flawlessly planned and executed a myriad of administrative and logistical tasks in support of over 100 attendees . . . [Appellant] possesses all of the traits and demonstrates the abilities required for increased responsibility and, ultimately promotion to Chief Petty officer." (Exhibit B.)

Finally, in Applicant's DD Form 214, it shows that Applicant received an Honorable Discharge in August 31, 2008, and during his years in the Navy, he earned two Navy/Marine Corps Commendation Medals, five Navy/Marine Corps Achievement Medals, three Navy "E" ribbons, six Good Conduct Medals, two national Defense Service Medals, and several other distinguished awards. (Exhibit G.)

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. In this case, the question that has to be addressed is whether these SOR debts, that are listed on Applicant's credit report, were acquired by Applicant or his wife.

I considered the following factors in reaching my decision: 1) Applicant's testimony was extremely credible that none of these debts were his, and he has never lived in such a manner to have these kind of debts, nor had he used the services of any of these companies; 2) Applicant testified that he spoke to his wife, and she told him that she had not incurred these debts; she also submitted a letter where she represented that she was not aware of these debts; 3) while Applicant was not as aggressive as he should have been, he did dispute the debts with one credit reporting service before the hearing, and he challenged it with all the agencies in writing after the hearing. Finally, I found Applicant very credible because of his outstanding 20 year career history in the United States Navy; I considered his DD Form 214 that showed all of the honors he had achieved, his excellent evaluations, and his letters of recommendation. For all of the reasons discussed above, I have reached the conclusion that the debts listed on the SOR were not incurred by Applicant or his wife.

I do not find that any of the disqualifying conditions are factors for consideration in this case. I conclude that 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.

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 do not apply, considered together with the positive character letters on behalf of Applicant and his excellent military employment history, 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.e.: 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