

record open until June 4, 2010, to submit additional documents, and additional documents that were received, have been identified and entered into evidence as without objection as Exhibit B. Based upon a review of the case file, pleadings, exhibits, and the testimony of Applicant and the additional witnesses, 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 36 years old. He is not married, and he has two sons. 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 13 allegations (1.a. through m.) 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 \$338. In his RSOR, Applicant admitted this allegation, but claimed that it was for a cable box that he had returned, and he was disputing it. At the hearing, Applicant testified that he has disputed this debt with the credit reporting agencies. (Tr at 58 – 60.) Exhibit 8 shows that this debt has been disputed. I find that Applicant has a good-faith dispute of this debt.

1.b. This overdue debt is cited in the SOR in the amount of \$996. In his RSOR and during his testimony, Applicant admitted this allegation, but claimed that it was not correct as it was from the property management where he formerly lived, and since he received back his initial deposit when he vacated the premises, the balance owed was \$0. Therefore, he has been disputing this debt.(Tr at 61 – 62.) I find that Applicant has a good-faith dispute of this debt.

1.c. This overdue debt is cited in the SOR for a judgment in the amount of \$565. In his RSOR, Applicant denied this allegation. However, at the hearing, Applicant testified that he has made a payment of \$300 on this debt, but there is still \$565 outstanding on this debt, despite his payment, and he plans to pay this debt in the next month or two. (Tr at 63 – 64.) I find that the debt has not yet been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$28,000 for child support. Applicant testified that he has made a payment plan where he would be paying \$400 a month, which would meet his current obligation of \$247 a month and the remainder would be applied to reduce his arrearage. This will be paid by automatic deduction. While Exhibit 8 indicated that Applicant owes \$29,499 on this debt, Applicant testified that he has been double billed for part of the debt, because when he moved,

more than one state tried to collect on the same debt. He therefore believed the debt was somewhat less, although he did not know the exact amount owed. (Tr at 65 - 69.) Exhibit B consisted of an Order to Withhold Income for Child Support, confirming that \$400 would be withheld every month from Applicant's wages to pay this debt.

1.e. This overdue debt is cited in the SOR in the amount of \$459. Applicant testified that this debt is the same as 1.c., above. (Tr at 69.) After reviewing the credit reports, I find this debt is the same debt to the same creditor as 1. c., and is only owed once. (Exhibits 4 – 8.)

1.f. This overdue debt is cited in the SOR in the amount of \$2,761. Applicant testified that this debt was paid, as it was on a secured credit card in which the credit card company had the funds to pay the debt. Applicant testified further that this debt has been removed from his credit report, which was confirmed on Exhibit 8. (Tr at 69 – 71.) I find that this debt has been resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$280. Applicant testified that this debt for his home gas bill has been paid. (Tr at 71 – 72.) While this debt was listed on Exhibit 4, it was not listed on any of the other credit reports. (Exhibits 5 – 8.) I find that this debt has been resolved.

1.h. This overdue debt is cited in the SOR in the amount of \$160. Applicant testified that he has disputed this debt for a cable bill, as when he moved from his premises, the cable company showed he had a balance of \$0. (Tr at 72.) This debt was listed on Exhibit 4, but it was not listed on any of the other credit reports. (Exhibits 5 – 8.) I find this debt has been resolved.

1.i. This overdue debt is cited in the SOR in the amount of \$1,342. Applicant testified that this debt, for a vehicle that he turned in, was paid when he returned the vehicle in the amount of \$2,100. He stated that when he disputed this bill it was removed from his credit report. (Tr at 73.) This debt was listed on Exhibit 4, but it was not listed on any of the other credit reports. (Exhibits 5 – 8.) I find this debt has been resolved.

1.j. This overdue debt is cited in the SOR in the amount of \$1,230. Applicant testified that this debt for college courses that he took was supposed to be paid for by his employer at the time. He stated that he sent a letter to the creditor, indicating that his employer was scheduled to pay it under the college reimbursement program, and the creditor agreed with Applicant, and this debt has subsequently been removed from his credit reports. (Tr at 74 – 75.) This debt was listed on Exhibit 4, but it was not listed on any of the other credit reports. (Exhibits 5 – 8.) I find this debt has been resolved.

1.k. This overdue debt is cited in the SOR in the amount of \$333. Applicant testified that this debt for wireless service has been paid. (Tr at 76.) This debt was listed on Exhibits 4 through 7, but Exhibit 8 states "customer disputes this account information. Paid, charge off." I find this debt has been resolved.

1.l. This overdue debt is cited in the SOR in the amount of \$132. Applicant testified that this debt has been paid, and it was removed from his credit reports. (Tr at 76 – 77.) While this debt was listed on Exhibit 4, it was not listed on any of the other credit reports. (Exhibits 5 – 8.) I find this debt has been resolved.

1.m. This overdue debt is cited in the SOR in the amount of \$1,992. Applicant testified that he was not aware of the origin of this debt, and he thereafter disputed it. He subsequently received a letter from Experian credit reporting service, which informed him that this debt would be removed from his Experian credit report. This debt was listed on Exhibit 4, but it was not listed on any of the other credit reports. (Exhibits 5 – 8.) I find this debt has been resolved.

Applicant testified that the majority of his financial problems occurred in the period from 1999 to 2000 when he was unemployed, and he was also forced to relocate to get other employment. Most of the overdue debts originated in 2000 and 2001. He had not resolved these debts until recently, because he was not aware of them until he met with the Government investigator in regards to this security clearance. He testified that he is now doing a better job of managing his credit by retaining and reviewing all of his documentation, as many of these debts were simply mistakes that he did not resolve until recently. He also makes sure that he remains on budget. Finally, he pays \$14 a month to have regular access to credit reports from each of the credit reporting agencies. (Tr at 79 – 83 .)

Mitigation

Applicant had three additional witness testify on his behalf. The first was a co-worker, who has known Applicant since November 2009, and he sees him every day at work. He indicated that he has no reason to doubt that Applicant is trustworthy, and he knows no reason why he can not be trusted. (Tr at 31 - 39.)

The second witness was also a co-worker, who has known Applicant for approximately 6 to 8 months. He testified that he believed Applicant had “an exemplary character.” He also testified that Applicant was honest, truthful, and trustworthy. (Tr at 41 – 44.)

The third witness was Applicant’s girlfriend, who has known Applicant for one year and seven months. She indicated that she has never seen Applicant act irresponsibly or negatively regarding his finances. She confirmed that Applicant considered, but did not purchase, a new vehicle, because it was outside of his budget. She also reiterated that Applicant has been proactive in attempting to resolve all of his debts for more than a year. She testified that Applicant had another bank account that he is holding for his children, which he could have used to pay off his child support arrearage, but he is saving that money for their college funds. Finally, the witness testified that Applicant is current on all of his most recent debts. (Tr at 45 – 56.)

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, together with the costs of moving to find employment. I find that he has acted responsibly, since he has been paying off his debts or challenging the debts that he has legitimately disputed. He has now set up a payment plan to resolve his one remaining significant overdue debt for child support. Therefore, I find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(c) is also applicable since Applicant has "received counseling for the problem and/or there are clear indications that the problem is being resolved."

Finally, AG ¶ 20(d) is 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 or resolved his overdue debt, and he has shown that he can maintain more financial stability. Therefore, he has mitigated the financial concerns of the Government.

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