



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-06996
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

December 13, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On April 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 June 4, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on July 13, 2010. DOHA issued a notice of hearing on August 9, 2010, and the hearing was initially set for September 9, 2010. Because of scheduling conflict, a second notice of hearing was issued on September 1, 2010, and I convened the hearing as scheduled on September 29, 2010. The Government offered Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf and submitted no exhibits at the time of hearing. His brother also testified on his behalf. DOHA received

the transcript of the hearing (Tr) on October 12, 2010. I granted Applicant's request to keep the record open until October 15, 2010, to submit additional documents, and several additional documents were received, identified collectively as Exhibit A, and entered into evidence without objection. Based upon a review of the case file, pleadings, exhibits, and the testimony of Applicant and his witness and his witness, eligibility for access to classified information is denied.

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 48 years old. He has never been married, and he has five biological children. 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 10 allegations (1.a. through 1.j.) regarding financial difficulties under Adjudicative Guideline F. The allegations will be discussed below in the same order as they were listed on the SOR:

At the hearing, Applicant testified that he was not certain as to which of the debts he actually owed and which ones were incorrect. He averred that he had employed a credit consulting company (CCC) in approximately December 2009, with the purpose to review his credit report and tell him which debts were actually his, and then to set up a payment plan with the creditors. He paid them approximately \$750 for their services. (Tr at 28 - 34.) Among the documents in Exhibit A are an enrollment agreement confirming that Applicant hired the CCC for \$750 on December 31, 2009, to help him resolve his overdue debts and a Limited Power of Attorney that Applicant signed over to this CCC. The record was left open to allow Applicant to submit a report from this CCC, stating which debts were actually owed. He testified that a report he received from the CCC on July 30, 2010, showed that their total estimate of what he actually owed was \$8,000. While a letter from the CCC to Applicant, dated April 1, 2010, was submitted, it did not have any information about any specific debts owed by Applicant or show what they believed Applicant actually owed. (Exhibit A.)

1.a. This overdue debt is cited in the SOR in the amount of \$1,121. No evidence was offered to show that this debt has been resolved or reduced. I find this debt is still due and owing.

1.b. This overdue debt is cited in the SOR in the amount of \$202. A receipt was submitted, establishing that \$202.90 was paid to this creditor on October 13, 2010. (Exhibit A.) I find this debt has been resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$119. A receipt was submitted, establishing that \$119 was paid to this creditor on October 13, 2010. (Exhibit A.) I find this debt has been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$482. No evidence was offered to show that this debt has been resolved or reduced. I find this debt is still due and owing.

1.e. This overdue debt is cited in the SOR in the amount of \$1,509 on a judgement filed against Applicant in October 2006. No evidence was offered to show that this debt has been resolved or reduced. I find this debt is still due and owing.

1.f. This overdue debt is cited in the SOR in the amount of \$15,103 for a repossessed vehicle. No evidence was offered to show that this debt has been resolved or reduced. I find this debt is still due and owing.

1.g. This overdue debt is cited in the SOR in the amount of \$20,431. A letter from the creditor dated March 8, 2010, was submitted, establishing that \$2,345.23 is still owing on this debt, and that Applicant had a payment due of \$75 by March 31, 2010. (Exhibit A.) I find that \$2,345.23 is still owing on this debt.

1.h. This overdue debt is cited in the SOR in the amount of \$2,220. No evidence was offered to show that this debt has been resolved or reduced. I find this debt is still due and owing.

1.i. This overdue debt is cited in the SOR in the amount of \$1,618. No evidence was offered to show that this debt has been resolved or reduced. I find this debt is still due and owing.

1.j. This overdue debt is cited in the SOR in the amount of \$336. No evidence was offered to show that this debt has been resolved or reduced. I find this debt is still due and owing.

Applicant provided three reasons for his financial difficulties. He testified that he was staying with one of his son's mother, and when she was unemployed for more than eight months, he paid a significant amount of the bills during this period. He also testified that over the years he has paid more than \$100,000 in child support, which has been a financial burden. Finally, he co-signed for a car loan for the mother of one of his son, and unbeknownst to him, she stopped payment on the vehicle. (Tr at 37 - 39.)

Paragraph 2 Guideline E, Personal Conduct

Applicant executed a Security Clearance Application (SCA) on May 28, 2009. (Exhibit 1.) The SOR alleges that Applicant failed to provide truthful and candid answers to several of the subsections of Question 26. They will be reviewed in the same order as they were addressed in the SOR:

2.a. Question 26 of the SEA asks, a. "In the last 7 years, have you had any possession or property voluntarily or involuntarily repossessed or foreclosed?"; b. "In the last 7 years have you been over 180 days delinquent on any debts(s)?"; c. "Are you currently over 90 days delinquent on any debts(s)?"; and e. "In the last 7 years, have you had a judgement entered against you?" Applicant answered "No" to each of these subsections of Question 26. It is alleged in the SOR that he failed to disclose that he was delinquent on the accounts set forth in subparagraphs 1.a. through 1.j., above.

Applicant testified that he was not aware of any of any of the overdue debts when he completed the SEA. He contended that if he had been aware of the overdue debts he would have included them on his SEA. He claimed that he was not aware of these debts because he had moved several times, and he did not always get his mail forwarded to him. (Tr at 50 - 52.) Applicant also was not aware that the payments for the vehicle of his son's mother, for which he cosigned, had not been made, but he certainly should have been aware that the car was repossessed. Finally, no evidence was presented as to why he was not aware of the judgement entered against him as stated in 1.e. Since Applicant averred that he moved very often, and that he was not aware of his overdue debts, it is possible that he was never served this judgement, but no evidence was introduced to establish that he did not receive notice of this judgement, and thus Applicant has failed to meet his burden as to this allegation.

Mitigation

As stated above, Applicant's brother testified on his behalf. They are two of 12 siblings. The witness stated that his brother has always worked hard, and he is honest and a man of integrity. He did not believe that his brother would ever try to deceive the Government. (Tr at 63 - 69.)

Applicant submitted a positive character letter in Exhibit A from the Security Manager for the company for which Applicant acts as the on-site guard. Applicant was described as, "trustworthy, honest, sincere and hardworking."

Applicant also submitted a Personal Financial Statement that showed his monthly income is \$3,352, with his monthly expenses \$1,691 and his debts \$1,074, leaving a net remainder of \$587. Finally, he averred that he is current on his most recent monthly bills, such as those for his apartment, cellular phone, etc. (Tr at 60 - 61.) Exhibit A showed that he has been making payments on his auto loan, auto insurance, and his child care.

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 commonsense 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 "[any 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 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 in part from his son's mother's loss of employment and his helping her financially. However, while Applicant did submit evidence to establish that he has repaid or resolved two of his considerable overdue debt; 1.b. and 1.c.; and made a partial payment on a third, 1.g., he failed to introduce evidence about the status of the other significant debts, as he indicated that he would do at the hearing. I cannot find that he has acted responsibly. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case.

I conclude that until Applicant is able to significantly reduce his overdue debt, he has not mitigated the financial concerns of the Government.

Guideline E, Personal Conduct

With respect to Guideline E, I find it credible that Applicant was not aware of his overdue debts when he completed his SEA, based on his credible testimony of his not receiving notice of the debts because of his several moves. I find that Applicant did not intend to mislead the Government regarding his debts. However, there is no evidence to explain why Applicant failed to inform the Government about the repossession of the vehicle or the judgement against him.

In reviewing the disqualifying conditions under Guideline E, I conclude that there was "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire" by Applicant. Therefore, I find ¶ 16 (a) applies against Applicant. I resolve Guideline E against Applicant

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 apply and no Mitigating Condition applies under Guidelines F and E, I find that the record evidence leaves me with 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 not 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:	AGAINST APPLICANT
Subparagraphs 1.a., 1.d., 1.e., 1.f., 1.h., 1.i., and 1.j.:	Against Applicant
Subparagraphs 1.b., 1.c., and 1.g.:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge