



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 -----) ISCR Case No. 10-00391
)
)
 Applicant for Security Clearance)

Appearances

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

February 25, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On June 2, 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 August 4, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on September 28, 2010. DOHA issued a notice of hearing on September 29, 2010, and I convened the hearing as scheduled on November 23, 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. DOHA received the transcript of the hearing (Tr) on December 1, 2010. I granted Applicant's request to keep the record

open until December 7, 2010, to submit additional documents, and additional documents that were received, have been identified and entered into evidence without objection as Exhibit E. Based upon a review of the 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 51 years old. He was married from 1980 to 1985, when he and his wife separated. They were divorced in 2008. He has three children. He served in the United States Army from 1977 to 1980, when 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 six allegations (1.a. through f.) regarding overdue debts under Adjudicative Guideline F. The allegations will be reviewed 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 \$2,823. In his RSOR, Applicant stated that he had filed a Chapter 7 bankruptcy to clear this debt.

1.b. This overdue debt is cited in the SOR in the amount of \$1,520. In his RSOR, Applicant stated that he had filed a Chapter 7 Bankruptcy to clear this debt.

1.c. This overdue debt is cited in the SOR in the amount of \$8,922. In his RSOR, Applicant stated that he had filed a Chapter 7 Bankruptcy to clear this debt.

1.d. This overdue debt is cited in the SOR in the amount of \$209. In his RSOR, Applicant stated that he had filed a Chapter 7 Bankruptcy to clear this debt.

1.e. This overdue debt is cited in the SOR in the amount of \$250. In his RSOR, Applicant stated that he had filed a Chapter 7 Bankruptcy to clear this debt.

1.f. This overdue debt is cited in the SOR in the amount of \$932. In his RSOR, Applicant stated that he had filed a Chapter 7 Bankruptcy to clear this debt.

Exhibit A includes a "Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors & Deadlines," which indicated that Applicant had a filed a Chapter 7 Bankruptcy on July 12, 2010. A Certificate of Counseling was also submitted in Exhibit A, establishing that, pursuant to the bankruptcy, Applicant had received credit counseling. Applicant also submitted a notice from the Bankruptcy Court, stating that on October 19, 2010, "A discharge of debtor was granted [to Applicant] under section 727 of title 11, United

States code (the bankruptcy code).” (Exhibit B.) In Exhibit E, Applicant submitted the Schedule F List of Creditors holding unsecured nonpriority claims. The debts listed as 1.a., 1.b., 1.c., and 1.f. are all included on the List of Creditors. While 1.d. and 1.e. are not on the List of Creditors under the same names as on the SOR, it does appear they are included under a different medical name. Therefore, I find that all of the debts listed on the SOR have been discharged in bankruptcy.

Applicant testified that his financial problems occurred because he had some credit card problems, which became overwhelming. He stated that he did not believe himself to be “financially smart.” When he had difficulty paying off his credit cards, he started using other credit cards to pay off the older credit card debt. While he was juggling payments, he had not become overdue on any of his debts. (Tr at 25-27, 34.)

In October 2004, he engaged the services of a debt settlement company (DSC). The DSC instructed him to stop making payments on all of his credit card debt. He made two payments of approximately \$350 each to this company, when he became unemployed for approximately six to eight months. (Tr at 44.) (Exhibit E.) His becoming unemployed contributed to his financial problems, as it made it extremely difficult to pay off his overdue debts. (Tr at 38.)

In June 16, 2009, he was hired by his current employer. When he once again became employed, he paid off two of his small debts. Exhibit E includes a letter from one creditor showing that Applicant settled one debt in the amount of \$536 on September 21, 2009. In an attempt to resolve all of his overdue debts as quickly as possible to help him obtain a security clearance, he made a determination to file for bankruptcy. (Tr at 26.)

Mitigation

Applicant submitted a character letter from a friend who has known Applicant for approximately 17 years. He described Applicant as “dependable and trustworthy” and someone who “can be trusted to make sound judgement decisions.” His friend also wrote Applicant “is also debt free after working very hard to clean up his financial debts.” (Exhibit D.)

Applicant testified that he is now following the lessons he learned from the bankruptcy counseling, including keeping a budget and keeping all of his receipts. While he was not instructed not to apply for or use any credit cards, he has made a determination not to have any in the future. (Tr at 31-32.) Applicant also submitted Schedule J, a personal financial statement from his bankruptcy, showing that he has a net monthly remainder of \$92.58. (Exhibit E.) As Applicant testified, his financial situation is now stable. (Tr at 35.)

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 in part from poor financial knowledge, but also from the periods of unemployment, which hindered his ability to pay off the debts. I find that he has acted responsibly, since he paid off two of the smaller debts by himself, then engaged the services of a debt reduction company, to which he made two payments. It was only because he became unemployed that he was unable to continue using their services to finish paying off his debts. Ultimately, he availed himself of the legal remedy of bankruptcy, by filing a Chapter 7 Bankruptcy. All of his overdue debts have now been discharged in bankruptcy, and Applicant is now current on his most recent debts and has a system in place, including a budget and a review of all receipts, to help keep him from having financial problems in the future. 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 these mitigating conditions are also factors for consideration in this case.

I conclude that Applicant has resolved 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 the positive character letter from Applicant's long-time friend, 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.f.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge