



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 10-00860
)
)
Applicant for Security Clearance)

Appearances

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

January 18, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On May 4, 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 23, 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 10, 2010. DOHA issued a notice of hearing on September 23, 2010, and I convened the hearing as scheduled on November 24, 2010. The Government offered Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through C, at the time of hearing, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on December 10, 2010. I granted Applicant's request to keep the record

open until December 15, 2010, to submit additional documents, and 27 pages of additional documents that were received have been identified and entered into evidence without objection as Exhibit D. Based upon a review of the case file, pleadings, exhibits, and the testimony of Applicant, 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 following findings of fact:

Applicant is 33 years old. He was previously married, and he is going through a divorce from his current, second marriage, and he has two children. Applicant served in the United States Army from 1996 to 2004. He served one year in the Air National Guard, and he enlisted for six more years in the Air National Guard in 2010. He is currently unemployed from a civilian position, but he is seeking a DoD security clearance in connection with future employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 23 allegations (1.a. through w.) 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 \$400. At the hearing, Applicant testified that some of the debts had been disputed, and he had made arrangements with some of the creditors to start making payments to resolve some of these debts when he started working again, but he was not certain what the status was of each debt, as listed on the SOR. Up to the time of the hearing, Applicant had not been employed, primarily because he did not have a security clearance. (Tr at 29-33.) In Exhibit D, Applicant furnished his understanding of the current status of each debt. As to this debt, he confirmed his indebtedness, and he stated that he had made payment arrangements with the creditor to resolve this debt. I find that this debt is still unresolved.

1.b. This overdue debt is cited in the SOR in the amount of \$787. In Exhibit D, Applicant confirmed that he owed this debt, and he plans to make payment arrangements with the creditor to resolve this debt after he begins employment. I find that this debt is still unresolved.

1.c. This overdue debt is cited in the SOR in the amount of \$288. In Exhibit D, Applicant confirmed that he owes this debt, and he plans to make payment arrangements with the creditor to resolve this debt after he begins employment. I find that this debt is still unresolved.

1.d. This overdue debt is cited in the SOR in the amount of \$73 for a check that was returned for insufficient funds. In Exhibit D, Applicant denied that he owed this debt,

as he contended that he had never written a check to this creditor in 2004. He averred that this debt had been deleted from his credit reports. Exhibit 9 confirms that this debt is no longer listed on his credit report.

1.e. This overdue debt to the same creditor as 1.d., above, is cited in the SOR in the amount of \$75 for a check that was returned for insufficient funds. In Exhibit D, Applicant denied that he owed this debt, as he contended that he had never written any check to this creditor in 2004. He averred that this debt had been deleted from his credit reports. Exhibit 9 confirms that this debt is no longer listed on his credit report.

1.f. This overdue debt is cited in the SOR in the amount of \$50. In Exhibit D, Applicant denied that he owed this debt, as he contended that he had paid this account years ago. He indicated that he is disputing this debt. I cannot find that this debt has been resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$673. In Exhibit D, Applicant confirmed that he owes this debt, but the bill originally arrived after he had left his former residence because of deployment. He plans to make payment arrangements with the creditor to resolve this debt after he begins employment. I find that this debt is still unresolved.

1.h. This overdue debt is cited in the SOR in the amount of \$6,156. In Exhibit D, Applicant confirmed that he owes this debt, and he plans to make payment arrangements with the creditor to resolve this debt after he begins employment. Exhibit D also contains a letter from this creditor, dated September 14, 2010, confirming that Applicant would start making payments of \$150 a month, beginning November 30, 2010, to resolve this debt. I find that this debt is still unresolved.

1.i. This overdue debt is cited in the SOR in the amount of \$9,355. In Exhibit D, Applicant denied that he owed this debt, as he contended that this was for a vehicle that was totaled, and his insurance should have paid this account and resolved it. He indicated that he is disputing this debt. I cannot find that this debt has been resolved.

1.j. This overdue debt is cited in the SOR in the amount of \$42. In Exhibit D, Applicant denied that he owed this debt, as he contended that this was for a medical bill he incurred while he was on active duty, and his medical insurance should have paid this account. He indicated that he is disputing this debt. I cannot find that this debt has been resolved.

1.k. This overdue debt is cited in the SOR in the amount of \$246. In Exhibit D, Applicant denied that he owed this debt, as he contended that this was for a medical bill he incurred while he was on active duty, and his medical insurance should have paid this account. He indicated that he is disputing this debt. I cannot find that this debt has been resolved.

1.l. This overdue debt is cited in the SOR in the amount of \$58. In Exhibit D, Applicant denied that he owed this debt, as he was unaware of the origination of this

debt. He averred that this debt had been deleted from his credit reports. Exhibit 9 confirms that this debt is no longer listed on his credit report.

1.m. This overdue debt is cited in the SOR in the amount of \$568. In Exhibit D, Applicant denied that he owed this debt, as he contended that he had paid this account years ago. No evidence was presented to establish that this debt is resolved.

1.n. This overdue debt is cited in the SOR in the amount of \$82 for a check that was returned for insufficient funds. In Exhibit D, Applicant denied that he owed this debt, as he contended that he had never written a check to this creditor in 2004. He averred that this debt had been deleted from his credit reports. Exhibit 9 confirms that this debt is no longer listed on his credit report.

1.o. This overdue debt is cited in the SOR in the amount of \$209. In Exhibit D, Applicant denied that he owed this debt, as he contended that he had never written a check to this creditor in 2004. He averred that this debt had been deleted from his credit reports. Exhibit 9 confirms that this debt is no longer listed on his credit report.

1.p. This overdue debt is cited in the SOR in the amount of \$102. In Exhibit D, Applicant confirmed that he owes this debt, and he plans to make payment arrangements with the creditor to resolve this debt after he begins employment. I find that this debt is still unresolved.

1.q. This overdue debt is cited in the SOR in the amount of \$189. In Exhibit D, Applicant denied that he owed this debt, as he contended that this was for a medical bill he incurred while he was on active duty, although he was not sure of its origin, and his medical insurance should have paid this account. He indicated that he is disputing this debt. I cannot find that this debt has been resolved.

1.r. This overdue debt is cited in the SOR in the amount of \$262. In Exhibit D, Applicant confirmed that he owes this debt, and he has made payment arrangements with the creditor to resolve this debt. I find that this debt is still unresolved.

1.s. This overdue debt is cited in the SOR in the amount of \$463. In Exhibit D, Applicant denied that he owed this debt, as he contended that this was for a medical bill he incurred while he was on active duty, although he was not sure of its origin, and his medical insurance should have paid this account. He indicated that he is disputing this debt. I cannot find that this debt has been resolved.

1.t. This overdue debt is cited in the SOR in the amount of \$254. In Exhibit D, Applicant denied that he owed this debt, as he was not sure of its origin. He indicated that he is disputing this debt. I cannot find that this debt has been resolved.

1.u. This overdue debt is cited in the SOR in the amount of \$819. In Exhibit D, Applicant confirmed that he owes this debt. He further confirmed that this debt occurred during a period when he was going through a divorce, and this debt, as well as some of

the other debts of which he was not aware of the origin, could have been from the purchases of his ex-wife. I find that this debt is still unresolved.

1.v. This overdue debt is cited in the SOR in the amount of \$437. In Exhibit D, Applicant denied that he owed this debt, as he contended that he had never written a check to this creditor and he is unaware of the origin of this debt. He averred that this debt had been deleted from his credit reports. Exhibit 9 confirms that this debt is no longer listed on his credit report.

1.w. This overdue debt is cited in the SOR in the amount of \$5,606. In Exhibit D, Applicant confirmed that he owes this debt for a vehicle that was repossessed when he was deployed, and he has been working to resolve this debt. I find that this debt is still unresolved.

Applicant explained in his RSOR, Exhibit D, and by testimony that his financial problems occurred as a result of two issues. The first was periods of unemployment or underemployment. At the time of the hearing, he had been unemployed from February 2010 until the present. He had been previously unemployed from October 2008 through January 2009. In January 2009 he served a year of active duty in the Air National Guard. Previously, Applicant had become unemployed for periods of several months in 2006 and 2007, after being deployed while working as a contractor in support of Operation Enduring Freedom.

The second cause of his financial difficulties was from his former and current wives. Many of the debts were incurred, unbeknown to him, by his first wife at the time when he was deployed in Iraq, when they were separated but still legally married. He did not become aware of some of these until he reviewed his credit reports. (Tr at 37-42.) He testified that his second wife also incurred additional debts and stopped working after they were married, which also contributed to his financial problems. (Tr at 61-64.)

He testified that he does not currently have any credit cards, and he has been struggling until he can find employment, including being homeless at times. He is owed some money for his service, and when he receives payment his situation will improve. (Tr at 66-70.)

Mitigation

Applicant submitted copies of four Army Achievement Medals and one Army Commendation Medal that he received during his service in the Army. (Exhibit B.) He also introduced Exhibit C, which shows that Applicant has received 11 letters for potential job offers. During his testimony, he indicated that he has received additional potential offers for employment after those listed in Exhibit C. (Tr at 36.)

In his post hearing documents (Exhibit D), Applicant submitted a letter showing another potential job offer. Exhibit D also includes Applicant's DD Form 214, establishing that Applicant served in the United States Army from 1996 to 2004, and received an Honorable Discharge in 2004, after being awarded a number of medals,

badges and citations. Applicant also submitted an NCO Evaluation Report for 2003 to 2004, which showed his overall rating was "Fully Capable." The bullet comments on the evaluation also state Applicant "strives for team effort and accomplishes all tasks," [is] "always candid; stood up for his Soldiers" and [is] "totally dedicated and mission oriented, a team player."

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 and underemployment, together with the bills incurred by both of his wives.

However, at this time, I cannot find that Applicant has acted responsibly regarding these debts. Of the 23 debts listed on the SOR, Applicant conceded that eight of them, totaling \$6,943 are correct, but no payments have been made on any of them, and Applicant has only made arrangements with one creditor to resolve one debt.

Applicant indicated that he has disputed all of the other 15 debts, totaling \$12,093, but no evidence was furnished as to what action, if any, Applicant had taken to dispute these debts, and only \$934 was shown to have been disputed successfully, leaving a total amount of disputed debts not resolved of \$11,159. Also, while Applicant’s basis for some of these disputes was that he did not recognize some of the creditors, he did concede in Exhibit D that some of the debts that he did not recognize may have

arisen from his ex-wife, and if they arose while they were married, he would be responsible for them even if he did not recognize them.

Finally, while Applicant was unemployed for most of 2010, he was employed for significant parts of the previous two years, and I find no evidence that Applicant attempted to resolve his debts during his periods of employment. Therefore, I do not find that this mitigating condition is a factor for consideration in this case.

Similarly, I do not find that AG ¶ 20(d) is applicable, since Applicant has not “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

I conclude that Applicant has not significantly reduced or resolved his overdue debt, and therefore, he has not 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 apply and the Mitigating Conditions do not apply, I find that the record evidence leaves me with significant questions and 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. - c., f.-k., m., p.-u., w.:	Against Applicant
Subparagraphs 1.d., e., l., n., o., and v.:	For 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