



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



In the matter of:)	
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)	ISCR Case No. 10-02819
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

December 6, 2012

Decision

MOGUL, Martin H., Administrative Judge:

On July 3, 2012, 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. (Item 1.) 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 July 23, 2012, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. (Items 4 and 5.) On August 13, 2012, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered 12 documentary exhibits. (Items 1-12.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on September 23, 2012. Applicant submitted no documents. The case was assigned to this Administrative Judge

on October 29, 2012. Based upon a review of the pleadings and exhibits, 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 FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 50 years old. He is divorced and has two children. Applicant served in the United States Air Force from 1980 to 1992. He served in the Air National Guard from 1992 through 2003. (Items 5 and 6.) Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 Guideline F, Financial Considerations

The SOR lists 68 allegations (1.a. through 1.ppp.) regarding a bankruptcy and overdue, unpaid debts, under Adjudicative Guideline F.

Applicant admitted in his RSOR that he filed a Chapter 7 bankruptcy in 2005, and that the bankruptcy was discharged in 2006, as alleged in 1.a. Approximately \$12,000 of debt was discharged. (Item 12.)

Applicant also admitted in his RSOR all of the debts, listed on the SOR as 1.b. through 1.ppp, which totaled approximately \$95,000. He wrote that he is currently filing a Chapter 13 bankruptcy. (Item 5.)

As stated above, Applicant was given the opportunity to submit a response to the FORM, and to furnish information regarding the debts that were alleged to be overdue in the SOR, and the current status of the bankruptcy that he indicated he planned to file. Applicant failed to respond to the FORM. No evidence was introduced to establish the status of this bankruptcy. I find that the full amount of the debts cited on the SOR of approximately \$95,000 is still outstanding.

Applicant cited a number of reasons for his financial difficulties. Applicant explained that prior to his 1995 Chapter 7 bankruptcy, he had made several poor financial decisions, including abusing credit cards and spending money on cars of poor value. (Item 8.) Additionally, Applicant was unemployed from June 2005 through October 2009, after he was involved in a motorcycle accident that occurred in June 2005. (Item 6.)

Paragraph 2 Guideline E, Personal Conduct

The SOR alleges that Applicant furnished incomplete, untruthful information on a Security Clearance Application (SCA) that he completed and certified on December 15, 2009. Applicant answered, "No," to the questions in section 26, subsections c., d., e., g.,

h., m., and n., regarding failure to file taxes, as well as the presence of tax liens, judgements, collections, charge-offs, and debts that were over 180 days delinquent, or that are currently over 90 days delinquent. In his RSOR, Applicant denied this allegation and wrote, "I hadn't gotten all of my bills at that time." I find that Applicant should have given affirmative responses to each of these questions and included 43 of the delinquent debts listed on the SOR. While Applicant may not have been aware of all of the overdue debts, it is inconceivable that he was not aware of any of these debts. Therefore, I find that Applicant knowingly furnished untruthful information to the Government.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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 accumulated significant delinquent debts totaling approximately \$95,000.

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 reviewed above, Applicant claimed that his poor finances were because of a significant period of unemployment. However, no evidence was introduced to establish that Applicant has resolved any of his considerable overdue debt, or acted responsibly. While Applicant contends that he is planning to resolve his debts by the legal remedy of bankruptcy, which he had used previously in 2005 and 2006, Applicant introduced no documentation to establish that he has taken any action toward resolving his debt in bankruptcy. Therefore, I do not find that this potentially mitigating condition is a factor for consideration in this case, nor do I find that any other mitigating condition applies.

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 that Applicant knew or should have known of his extensive overdue debts that had been acquired over several years, and he should have included these overdue debts when he completed his SCA. Because of his lack of honesty and candor regarding very clearly written questions, I find that Applicant did intend to mislead the Government.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. If such an individual intentionally falsifies material facts, it is extremely difficult to conclude that he nevertheless possesses the judgment and honesty, necessary for an individual given a clearance.

In reviewing the disqualifying conditions under Guideline E, I conclude that because of Applicant's "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire" that ¶ 16(a) applies against Applicant. I find no mitigating conditions can be applied. I therefore, 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, including all of the reasons cited above as to why the disqualifying conditions apply and no mitigating condition is applicable under Guideline F or E. Therefore, 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 under the whole-person concept.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.ppp.:	Against 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