



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



In the matter of:)	
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)	ISCR Case No. 10-04534
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

May 24, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On October 1, 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) effective within the Department of Defense for SORs issued after September 1, 2006.

On November 2, 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 January 4, 2011. DOHA issued a notice of hearing on January 11, 2011, and I convened the hearing as scheduled on February 3, 2011. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through S, at the time of hearing, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on February 16, 2011. I granted Applicant's request to keep the record open until February 18, 2011, to submit additional documents. He introduced an index

and additional documents that were identified as Exhibits T through Y, which were entered into evidence without objection. 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 41 years old. He was married from 1989 to April 2009, and he has three children. Applicant has been employed by a defense contractor for almost 25 years, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists five allegations (1.a. through e.) 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 \$4,780. Applicant denied this allegation in his RSOR. At the hearing, Applicant testified that after he separated from his wife, he moved into an apartment and signed a nine month lease. However, he was told by the manager of his apartment, that despite the lease, he could move out after he gave notice and the manager found another tenant to take his place. After two weeks living at this apartment, he informed the manager that he could not afford living there. He moved out after six weeks, and he was informed that he owed \$4,780, although he was never made aware upon what that amount was based. (Tr at 36-40.)

On November 16, 2010, Applicant employed the services of an individual to help him resolve his overdue debts. Exhibit F is a letter from the individual who is employed by Applicant to help him resolve his credit issues. Applicant confirmed that he is disputing this debt, and at this point the debt has not been resolved. Exhibit G includes a letter to the creditor in which Applicant explains his basis for this disputing this debt. I find that Applicant is now attempting to dispute this debt, although he has not pursued the dispute in a timely manner.

1.b. This overdue debt is cited in the SOR in the amount of \$7,146. Applicant testified that this debt was ordered to be paid by Applicant's wife in their dissolution of marriage. (Tr at 43-46.) I find that this debt was ordered to be paid by the wife in the Judgement of the dissolution of the marriage of Applicant. (Exhibit J.) Applicant also submitted a letter from his ex-wife, in which she confirms that she was ordered to pay this debt. (Exhibit K.) I find that Applicant's wife is now legally responsible for this debt.

1.c. This overdue debt is cited in the SOR in the amount of \$15,888. Applicant testified that he did not know the origin of this debt. Based on Applicant's testimony, this debt may be for the short sale on his home, because I take official notice that the named creditor purchased the loans from the original lender for Applicant's home. At this point, Applicant testified that he plans to have his credit counselor contact the creditor to try to resolve this debt. (Tr at 46-51.) I find that this debt is still unresolved.

1.d. This overdue debt is cited in the SOR in the amount of \$174. Applicant testified that he did not know the origin of this debt, but if he knew to who the debt was owed, he would have paid the debt. Applicant testified that he plans to have his credit counselor contact the creditor to try to resolve this debt. (Tr at 52-53.) I find that this debt is still unresolved.

1.e. This overdue debt is cited in the SOR in the amount of \$6,317. Applicant testified that he was ordered to pay this debt upon the dissolution of his marriage. At this point, Applicant testified that he plans to have his credit counselor contact the creditor to try to resolve this debt. (Tr at 53-57.) I find that this debt is still unresolved.

Upon his divorce, Applicant was ordered to pay a total of \$5,452 per month for spousal support and child support for two of his children. He testified that at this time he is in arrearage to his ex-wife for spousal support in the amount of approximately \$16,000. He also owed approximately \$8,000 to his attorney for attorney's fees and \$12,500 for his wife's attorney's fees, but he testified that those fees have been paid. Finally, within the last year he purchased a new truck for \$43,000 to replace a 2002 BMW that he described as a lemon. He was able to pay for the car outright. (Tr at 60-63, 79-80, 84.)

Applicant explained that his financial problems occurred solely as a result of his divorce, and he claimed that prior to his divorce his credit "wasn't bad." (Tr at 61-64.)

Mitigation

Applicant submitted eight positive character letters from his customers, friends, business suppliers, and one from his father, who is also the CEO of his employer. (Exhibits L, M, N, O, P, Q, R, and S.) He was described as someone of "good character and high standards," "reliable and a man of great integrity." Finally, his father described him as "a very honest and trustworthy person."

He also submitted three letters, dated January 12, 2011, that he sent to the three credit reporting agencies in which he disputes what he described as "several inaccurate items listed on my credit report," and a letter from his credit counselor, confirming that he is working with Applicant to remove derogatory information from his credit report. (Exhibits U, V, W.)

Finally, Applicant introduced a personal financial statement, which showed that Applicant's monthly net income is \$7,203.19 and his net monthly expenses are \$7,901.85. (Exhibit Y.)

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 solely from his divorce.

However, at this time, I cannot find that Applicant has acted responsibly regarding these debts. Of the five debts listed on the SOR, none have been paid. Applicant is disputing one, and one was ordered to be paid by his ex-wife. However, the three remaining debts have not been paid or reduced, and there is no evidence that Applicant has made any arrangements to resolve them. Additionally, he is still in arrearage to his ex-wife for spousal support in the amount of \$16,000. Finally, while Applicant made no payments on these debts, he was able to purchase outright a new vehicle in the amount of \$43,000.

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 find that this mitigating condition is also not a factor for consideration in this case.

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. - 1.e.:	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