



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



In the matter of:)	
)	
)	ISCR Case No. 10-05281
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Kathryn D. MacKinnon, Esquire, Deputy Chief Department Counsel
For Applicant: *Pro se*

April 5, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On September 22, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 October 7, 2010, 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. (Item 2.) On October 21, 2010, 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 eleven documentary exhibits, with some subsets. (Items 1-11.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on December 11, 2010.

Applicant submitted no additional evidence. The case was assigned to this Administrative Judge on January 6, 2011.

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his RSOR, Applicant admitted both SOR allegations. The admitted allegations are incorporated herein as 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 additional findings of fact:

Applicant is 27 years old. He is a retired Specialist from the U.S. Army who was injured while serving on deployment in Iraq. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

The SOR lists two allegations (1.a. and 1.b.) regarding financial difficulties under Adjudicative Guideline F. The debts 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 past due amount of \$64,000 for a mortgage account with a total loan balance of \$281,000. Applicant's explanation for falling behind on this debt is that the Veterans Administration (VA) had approved processing his application for increased compensation on June 2007, but delayed payments until January 2008. (Items 3 and 6.) Applicant averred that he was dependent upon this additional compensation to pay his mortgage. (Item 6.)

It appears that Applicant did not receive the compensation to which he was entitled and which was approved, for a period of time from June 2007 until January 2008, or approximately six months. Two significant questions have been raised in the FORM by Department Counsel, which I will review as follows:

1) Since Applicant entered into a mortgage of \$284,000 with payment of \$2,000 due each month, before he had applied for increased compensation from the VA on June 2007, was entering that mortgage a reasonable financial act, and is it accurate for Applicant to claim that the delay of the increased income was the reason for his difficulty in paying his mortgage?

The record clearly shows that Applicant applied for and received his mortgage before he ever applied for, let alone received, an increase in compensation from the VA. Since Applicant has claimed that his failure to continue paying his mortgage was because he was delayed in receiving that income increase, then it certainly can be argued that either his entering into the mortgage was financially irresponsible, as he

could not have known he would receive additional income when he entered into the mortgage, or the delay in the increased income was not the reason for his failure to properly make the mortgage payments.

2) If the arrearage was due to circumstances beyond Applicant's control, has evidence been presented to establish that Applicant acted responsibly to resolve the situation?

Unfortunately, the record does not establish that Applicant was timely with all of his mortgage payments before the delay in receiving his additional income, nor that once he received his increased income, he was responsible in making the mortgage payments including the arrearage.

1.b. This overdue debt is cited in the SOR for a judgement against Applicant in the amount of \$1,657. This debt is the result of Applicant not paying his Home Owner Association (HOA) fees. Applicant stated that he initially, and incorrectly, believed that these fees were included in his mortgage payment. (Item 4.) No evidence was submitted to show that Applicant relied on some information he received to make this incorrect assumption. Applicant also claimed that when this bill went to collection, the collection notice of his overdue debt was sent to an incorrect address. However, a judgement was entered on May 15, 2008, and Applicant became aware of the judgment and overdue debt, at least as of that date.

The record indicates that Applicant did begin making payments for a period of time after the judgement was entered, but when the management company changed, and Applicant claimed that he became confused where to send the HOA, he stopped making payments. (Item 3.) Additionally, there is no explanation as to why, when he began making payments to the HOA, he did not pay off the Judgment for fees previously in arrears.

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 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 reviewed above, Applicant claimed that he became overdue on his mortgage because he did not receive an increase in compensation from the VA for several months as he was due. However, no evidence was introduced to establish that he has resolved any of his considerable overdue debt, or 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.

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. Also, since this case is an Administrative Determination, I have not had the opportunity to assess the credibility of the Applicant in person, nor has any independent evidence concerning Applicant’s character been submitted. 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.

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. and 1.b.: 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