



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



In the matter of:)	
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)	ISCR Case No. 10-05485
)	
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 27, 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 17, 2010, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment 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 17, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through U at the time of hearing, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on February 14, 2011. I granted Applicant's request to keep the record open until February

18, 2011, to submit additional documents, and additional documents that were received, have been identified and entered into evidence as without objection as Exhibits V through NN. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

Findings of Fact

In his RSOR, Applicant admitted all of the SOR allegations 1.a. through 1.i. 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 testimony of Applicant, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 39 years old. He is currently unmarried, although he was married from 1994 to 2009, and he has one daughter. Applicant served in the United States Navy from 1989 to 1999, when he was medically retired due to a diagnosis that he was suffering from amyotrophic lateral sclerosis or Lou Gehrig's disease. The diagnosis has since been changed, but for several years Applicant believed he had a fatal disease. Applicant testified that, but for this diagnosis, he would still be in the Navy today. (Tr at 51-53.) 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 9 allegations (1.a. through i.) regarding overdue debts and bankruptcy under Adjudicative Guideline F. As reviewed above, Applicant admitted all of the allegations in his RSOR. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. In December 1996, Applicant filed a Chapter 13 bankruptcy. The bankruptcy was converted to a Chapter 7 bankruptcy and discharged in August 2000. Applicant testified that during his years in the Navy, both he and his wife were not as financially responsible as they should have been, and they found themselves with a significant amount of debt. They ultimately decided to file bankruptcy as a method to resolve their debts. Applicant estimated that the debt discharged was between \$10,000 and \$13,000. The bankruptcy discharged most of their debts, but there were some debts that they planned to pay off so they did not discharge them in bankruptcy. (Tr at 54-57.)

1.b. This overdue debt is cited in the SOR in the amount of \$632. Among the post hearing documents submitted by Applicant was his summary of each of the debts listed on the SOR. (Exhibit MM.) Applicant wrote that this debt was paid in full on February 7, 2011. Exhibit KK, a bank statement of Applicant, dated February 15, 2011, shows a payment of \$632 was made to this creditor on February 9, 2011. I find that this debt has been paid in full.

1.c. This overdue debt is cited in the SOR in the amount of \$1,000. In Exhibit MM, Applicant wrote that he has made a payment plan with the collection agency that purchased this debt to make three monthly payments of \$200.20 to settle this debt for 60% of the original debt. Exhibit HH is a letter form the creditor confirming this arrangement.

Applicant wrote that he has made one payment of \$200.20 on February 11, 2011. Exhibit II is a copy of Applicant's first payment to this creditor. I find that the debt has not yet been completely resolved, but Applicant is making a good faith effort to pay this debt, and it should be resolved shortly.

1.d. This overdue debt is cited in the SOR in the amount of \$417. Applicant wrote that this debt was settled for \$208.52, and he made the payment on January 20, 2011. (Exhibit MM.) Exhibit FF is a letter form the creditor for this debt, dated January 20, 2011, confirming that this debt has been settled in full. I find that Applicant has resolved this debt.

1.e. This overdue debt is cited in the SOR in the amount of \$923. In Exhibit MM, Applicant wrote that this debt was settled for \$486.40 on February 2, 2011. Exhibit U, Applicant's bank statement dated February 2, 2011, confirms that a payment of \$486.40 was made by Applicant toward this debt. I find that Applicant has resolved this debt.

1.f. This overdue debt is cited in the SOR in the amount of \$974. In Exhibit MM, Applicant wrote that this debt was settled for \$502.75 on February 2, 2011. Exhibit U confirms that a payment of \$502.75 was made by Applicant toward this debt. I find that Applicant has resolved this debt.

1.g. This overdue debt is cited in the SOR in the amount of \$16,839. In Exhibit MM, Applicant wrote that this debt was successively sold to two other companies. He contacted the current creditor and was told that the debt has been increased to \$18,882.72. He made a payment plan with the creditor to pay \$200 a month toward this debt. He indicated that his plan is to increase the amount of each monthly payment as his other debts are resolved, so that he can satisfy the debt as expeditiously as possible. Exhibit JJ is a Western Union confirmation that \$200 was sent to the creditor of this debt on February 11, 2011. I find that Applicant has begun the good faith effort to pay off this debt, but the debt remaining is substantial.

Applicant testified that this debt was for a vehicle that was in the possession of his wife and was supposed to be paid by her. But she defaulted on the payments and the vehicle was repossessed. Since his name was also on the contract, he was also responsible for the debt. (Tr at 67,75-77.)

1.h. This overdue debt is cited in the SOR in the amount of \$2,619. Applicant wrote that he has made a payment plan with this creditor to make 12 monthly payments of \$230.37 to resolve this debt. (Exhibit MM.) Exhibit KK confirms that a payment of \$230.37 was made to this creditor on February 14, 2011. I find that Applicant has begun

the good faith effort to pay off this debt, and the debt should be resolved within 12 months.

1.i. This overdue debt is cited in the SOR in the amount of \$326. In Exhibit MM, Applicant wrote that this debt was settled for the full amount of \$325.50. Exhibit KK confirms that a payment of \$325.50 was made to this creditor on February 8, 2011. I find this debt has been resolved.

Applicant testified that the majority of his financial problems occurred when he was married to his now ex-wife, and often they were bills taken on by his wife. He conceded that they both enabled each other with some of the less than responsible fiscal behavior. However, his wife was in charge of the finances, and there was considerable difficulty in his wresting away from her the control of the finances, which, he testified, ultimately led to their divorce. (Tr at 65-66, 87-88.)

He is currently paying \$1,400 a month for spousal support and \$1,383 a month for child support. He is current on both of those payments. He testified that in April 2011, his spousal support is scheduled to be reduced to \$900 a month, giving him more disposable income to resolve his debts. (Tr at 78.) Applicant also testified that he is current on his apartment rent, his utilities, phone bill, and cable bill, and the 2000 vehicle that he owns is paid off. The only credit card that he owns is a corporate card that is current and he only uses it for business. (Tr at 83-86.)

Mitigation

Applicant submitted documents showing that he received the Navy Achievement Medal and an Honorable Discharge in November 1995, before he reenlisted. He also submitted a letter showing his disability is permanent and stabilized, and he was transferred to the retired list. (Exhibits W, X, Y, Z, AA, BB.) On his DD Form 214, it shows that, in addition to the Navy Achievement Medal Applicant received, Applicant also earned Joint Meritorious Unit Award, the Navy "E" Ribbon, the Navy Good Conduct Award, and the National Defense Service Medal. (Exhibit A.)

Applicant also submitted positive character letters, including a letter from his supervisor from May 1998 to July 1999. He stated that Applicant would "be a valuable asset and any company would be fortunate to employ him." (Exhibits P, Q, R, CC.)

Finally, Applicant also forwarded his Performance and Development Summary from his employer for 2009. His overall performance was rated "Exceeds Requirements." (Exhibit DD.)

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 commonsense 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 his divorce. I find that he has acted responsibly, since he has been paying off his debts. He has now set up a payment plan to resolve his two remaining significant overdue debts. Therefore, I find that this mitigating condition is a factor for consideration in this case.

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 this mitigating condition is also a factor for consideration in this case.

I conclude that Applicant has significantly reduced or resolved his overdue debt, and he has shown that he can maintain more 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 letters on behalf of Applicant and his excellent military and civilian employment history, 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.i.: 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