



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 10-10120
)
)
Applicant for Security Clearance)

Appearances

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

June 29, 2012

Decision

MOGUL, Martin H., Administrative Judge:

On February 3, 2012, 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 after September 1, 2006.

On March 1, 2012, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. The case was initially assigned to an Administrative Judge on May 11, 2012. Because of a scheduling conflict, it was assigned to a second Administrative Judge on June 6, 2012. Because of a second scheduling conflict, it was assigned to this Administrative Judge on June 12, 2012. DOHA issued a notice of hearing on May 21, 2012, and I convened the hearing as scheduled on June 15, 2012. The Government offered Exhibits 1 through 11, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A and B at the time of hearing, which were also received without objection.

Applicant's wife also testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on June 25, 2012. I granted Applicant's request to keep the record open until June 22, 2012, to submit additional documents, and Exhibits C through F were timely received and entered into evidence without objection. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

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 his witness, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 37 years old. He is married, and he has two children. Applicant served in the United States Army from 1995 to 2001, and he was Honorably Discharged. Applicant has been employed by his current employer, a defense contractors for more than 10 years. Applicant is seeking a DoD security clearance in connection with employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 1 allegation (1.a.) regarding an overdue debt under Adjudicative Guideline F:

1.a. This overdue debt is cited in the SOR in the amount of \$37,993 for an account placed in collection. At the hearing, Applicant testified that this debt was not incurred by him, and he explained the history of the debt. (Tr at 31-34.) I find that this debt was not incurred by Applicant, and he has acted very responsibly in attempting to resolve this situation.

Applicant testified that in 2008 or 2009, while he was on Temporary Duty, he lost his American Express credit card when he was at a gas station. When he realized that he lost the card, he immediately called American Express and reported that his card had been lost. He completed a report on the phone and was informed that American Express had an office in the city where he was staying. The next day, he went to the American Express office, and he received a new card issued by the company with a different number than the card he had lost. (Tr at 26-29.)

While Applicant was deployed overseas, six or seven months later, he was informed that his American Express card was frozen, and he could no longer use it. When he returned to the United States, he contacted American Express and told a representative of the company that any activity incurred on the card was fraudulent. A fraud number was assigned to the case, and Applicant was informed that they would be sending him a fraud packet, which he was to complete. Applicant testified that he never received the fraud packet, despite both he and his wife calling on many occasions and ultimately sending written requests to have the fraud packet sent to them. Applicant

estimated that he and his wife called to request a fraud packet, “a dozen or so times over the next few years,” but one was never sent to them. (Tr at 30-35.) Exhibit A consists of two letters, dated May 8, 2011, sent to two different addresses of American Express, in which Applicant explains the situation and requests a fraud packet. Exhibit B consists of the response letter from American Express, dated August 22, 2011, informing Applicant that the matter was assigned to customer service, and once an investigation was conducted the matter could be resolved. Applicant never received any further contact from American Express. Exhibit 3 includes three letters sent on March 25, 2012, to the three major credit reporting agencies, in which Applicant disputes the debt and explains the situation. Applicant continues to attempt to have American Express send him a fraud packet so he can complete the form and reiterate what he has informed them on may occasion by telephone and mail that the credit card in question was lost and the bills on the card were fraudulently incurred. (Tr at 41-43.)

Applicant testified, and the credit reports confirmed, that with the exception of this debt, Applicant is current on all of his other debts. (Tr at 45.) (Exhibits 6-9.) Applicant also confirmed that he first received the credit card in question in 2003, and from 2003 until 2008, prior to this incident, he had always paid the bills for this credit in a timely fashion and was never late in paying the bills or used the card in an unauthorized manner. Also, because this credit card was issued by Applicant’s employer, Applicant has continued to keep the company aware of the status of this debt. (Tr at 48-50.)

Mitigation

As discussed above, Applicant’s wife also testified on Applicant’s behalf. His wife stated that because of her husband having the responsibility of deploying for his career, she is the one in the family who pays the bills, and she always keeps her husband apprised of the status of the bills. She reiterated that except for the problems associated with the bill that is the subject of the SOR, they have had no other problem with any other overdue bill. She also confirmed her husband’s testimony that they have been doing every thing they can to resolve this problem of the lost credit card and the fraudulently incurred debt, but despite their many requests, American Express has not sent them a fraud packet to complete, or done anything else to help them resolve this issue. Finally, she estimated that she has spent, “probably hundreds of hours talking with people” to try to get this issue resolved, but they have received no cooperation from American Express. (Tr at 53-61.)

Applicant also submitted several post hearing documents. Exhibit C is a copy of Applicant’s DD Form 214, which established that Applicant served in the United States Army from 1995 to 2001, when he received an Honorable Discharge. It also shows that during Applicant’s military career, he received a number of medals and awards. Exhibit D is an evaluation Applicant received during a period when he was deployed in 2008. His ratings in all categories was “Excellent,” and he was described as, “an expert repairman. Cheerful and enthusiastic, a pleasure to work with.” Exhibit E consisted of a series of Performance Evaluations received by Applicant from 2002 through 2011. All of his rating have been positive, and in his most recent evaluation from April 1, 2010, to

March 31, 2011, he was rated as “High Meets” job requirements, and he was described as a “valuable employee” and a “go to guy.”

Finally, Applicant submitted two complimentary character letters from people who know him in his professional life. (Exhibit F.) He was described as “a standup guy” and “trustworthy, dependable, reliable, and hard-working.”

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 concerns relating to the guideline for Financial Considerations are 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 do not find that either of these disqualifying conditions apply to Applicant in this case, nor do any other disqualifying conditions apply to this case. The evidence has established that Applicant has been up to date on all of his other debts, and the one delinquent debt that is the subject of the SOR was not incurred by him. Additionally, I am convinced that Applicant and his wife have acted responsibly by using every reasonable means available to them to attempt to resolve this debt that was incurred fraudulently against them.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. But since no disqualifying conditions apply to this case, no mitigating conditions need be reviewed. I conclude that Guideline F, Financial Considerations, is found for 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. Based on all of the reasons cited above as to why no disqualifying conditions apply, together with Applicant's excellent overall financial history as well as his excellent civilian and previous military careers, I find that the record evidence leaves me with no 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 under the whole-person concept.

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
Subparagraph 1.a.:	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