



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



In the matter of:)	
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)	ISCR Case No. 10-10367
)	
Applicant for Security Clearance)	

Appearances

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

May 29, 2012

Decision

MOGUL, Martin H., Administrative Judge:

The Defense Office of Hearings and Appeals (DOHA) issued an undated 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 December 31, 2011, 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 February 27, 2012. DOHA issued a notice of hearing on February 29, 2012, and I convened the hearing as scheduled on March 16, 2012. However, Applicant did not appear at the hearing. Thereafter, it was determined that Applicant had not understood the date that the hearing was set. A second notice of hearing was therefore issued on March 16, 2012, and the hearing did go forward on April 3, 2012. The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted no exhibits at the

time of hearing. DOHA received the transcript of the hearing (Tr) on April 16, 2012. I granted Applicant's request to keep the record open until April 20, 2012, to submit additional documents. Ten character letters were timely received and identified as Exhibit A, and additional copies of certificates of appreciation and other awards presented to Applicant were identified as Exhibit B. All of the documents were 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 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 52 years old. He was married in 1982 and has been separated from his wife since 2009. They have three children. Applicant served in the United States Army from 1977 to 1985, and he received an Honorable Discharge. Applicant indicated that he is not currently employed, but he previously worked for defense contractors for 22 years. His employment status will be discussed below. Applicant is seeking a DoD security clearance in connection with future employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 11 allegations (1.a. through k.) 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 \$1,641. At the hearing, Applicant testified that he is not certain if this debt is for him or for his father, but he believed it was for his father since it originated from an area where his father lived. He stated that he contacted one of the credit reporting agencies to question the debt, but it has not yet been resolved. (Tr at 31-34.) I find that this debt is in dispute, but not yet resolved.

1.b. This overdue debt is cited in the SOR in the amount of \$293. Applicant testified that this is his debt, and he has not yet paid it or contacted the creditor. (Tr at 34.) I find that this debt is still unresolved.

1.c. This overdue debt is cited in the SOR in the amount of \$2,173 for a State A tax lien. Applicant testified that he did not believe this was his debt since he was not working in State A at the time the debt originated. Applicant has not yet contacted State A, but he has engaged the services of a consumer credit counselor (CCC) to resolve this and his other debts. At this point, Applicant testified that he has yet to finish his payment to the CCC so they will work on his behalf. (Tr at 34-37.) Exhibit 3 shows the judgement and lien of \$2,173 owed to State A. I find that this debt is still unresolved.

1.d. This overdue debt is cited in the SOR in the amount of \$168. Applicant testified that he is disputing this bill because he believes that the creditor billed him unfairly. He averred that he has spoken to a representative of this creditor on the phone on several occasions, but the issue has not been settled. (Tr at 37-39.) I find that this debt is in dispute, but not yet resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$589. Applicant testified that this is his debt, and he has not yet paid it. He indicated that at one time he had contacted this creditor, but ultimately he could not make payments on the debt. (Tr at 34, 40-41.) I find that this debt is still unresolved.

1.f. This overdue debt is cited in the SOR in the amount of \$1,574 with an approximate balance of \$10,328. Applicant testified that both this debt and that listed as 1.g., below, are to the same creditor, and the total amount owed for the two debts is \$6,000. (Tr at 40-42.) I find that this debt and 1.g. are unresolved.

1.g. This overdue debt is cited in the SOR in the amount of \$1,165 with an approximate balance of \$6,903. This debt has been reviewed with 1.f., above.

1.h. This overdue debt is cited in the SOR in the amount of \$38,463. Applicant testified that this debt is for a home that he had owned, which was sold in a short sale. Applicant indicated that he did not believe the amount stated was the correct amount that he owed, but he did not know what the correct amount should be. He has been in contact with the creditor, but it has not been settled. (Tr at 42-44.) I find that this debt is in dispute, but not yet resolved.

1.i. This overdue debt is cited in the SOR in the amount of \$39. Applicant testified that he did not know the origin of this medical debt, but he has not made an attempt to ascertain the origin of this debt. (Tr at 44-45.) I find that this debt is still unresolved.

1.j. This overdue debt is cited in the SOR in the amount of \$323. Applicant testified that he still owes this debt for a parking ticket. (Tr at 45.) I find that this debt is still unresolved.

1.k. This overdue debt is cited in the SOR in the amount of \$118. Applicant testified that he still owes this debt. (Tr at 46.) I find that this debt is still unresolved.

Applicant explained that his financial problems occurred as a result of a motorcycle accident in which he was involved. As a result of the accident, his arm was very seriously injured, and he became unemployed for a period of two years. The accident did result in a lawsuit in which Applicant ultimately received \$35,000. Applicant also stated that he was denied the opportunity to collect unemployment, although he believed that he should have been entitled to collect it. Applicant stated that, before the accident and subsequent unemployment, he had never had overdue debts. Applicant also reiterated that he does not believe in using bankruptcy to help him with these debts.(Tr at 49-55.) Finally, Applicant testified that he is not overdue on any of his more current debts. (Tr at 64-65.)

Exhibit 2 includes a Personal Financial Statement made by Applicant on April 1, 2011, which showed that at that time he was earning a net monthly income of \$3,000. Applicant testified that he had temporary employment during the last year, but that the job “went away.” (Tr at 66-67.) What is of concern is a letter, dated April 4, 2012, received in Exhibit A from the president of an Engineering Company. He wrote, “[Applicant] started with [the Engineering Company] as a temporary employee on 10 November 2010 and remains with us today.” Based on this letter, Applicant has worked continually during the past approximately one and a half years. Several additional letters from employees at [the Engineering Company] also confirm that Applicant has worked there since November 2010. This directly contradicts Applicant’s testimony, in which he represented that over the last two years he was unemployed for most of the time, with some short periods of employment.

Mitigation

Applicant submitted ten positive character letters from people who know him in his professional and private life, including a letter from his daughter. (Exhibit A.) He was described as someone who is “disciplined, punctual and thorough.” Applicant also submitted a number of documents including copies of letters of congratulations and other positive honors he has received. (Exhibit B.)

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 injury and the subsequent unemployment.

However, at this time, I cannot find that Applicant has acted responsibly regarding these debts. Of the 11 debts listed on the SOR, none have been paid. Applicant claims to be disputing several, but there is no indication that Applicant took affirmative steps to challenge the bills he has disputed. Of the remaining debts there have been no payments made, nor is there is any evidence that Applicant has made any arrangements to resolve these debts. Four of these overdue debts are for amounts of less than \$300, and one is for \$323 for a parking ticket, yet Applicant has not even made an attempt to resolve these small overdue debts. Finally, if, as it appears, Applicant has been working regularly since November 2010, he should have been able to make some effort to resolve the larger overdue debts as well as the smaller ones.

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 do not find that this mitigating condition, or any other, is a factor for consideration in this case.

I conclude that Applicant has not 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

