



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



In the matter of:)	
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)	ISCR Case No. 11-02526
)	
Applicant for Security Clearance)	

Appearances

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

January 15, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On March 14, 2012, in accordance with **Department of Defense** (DoD) Directive 5220.6, the DoD 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; DoD 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 May 31, 2012, Applicant replied to the SOR (RSOR) in writing including four attachments, and he requested a hearing before an Administrative Judge. I received the case assignment on September 10, 2012. DOHA issued a notice of hearing on October 12, 2012, and the hearing was convened as scheduled on November 6, 2012. The Government offered Exhibits 1 through 12, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through F, which were also admitted without objection. The record was kept open until November 20, 2012, to allow Applicant to submit additional evidence. The documents that were timely received have been identified and entered into evidence without objection as Exhibits G through

J. DOHA received the transcript of the hearing (Tr) on November 14, 2012. 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 upon due consideration of that evidence, I make the following findings of fact:

Applicant is 57 years old. He is married, and he has one daughter. Applicant has been employed by his current employer, a defense contractor, for 21 years, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 14 allegations (1.a. through n.) 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 \$10,714. At the hearing, Applicant testified that this debt for a repossessed vehicle has not been paid, although he indicated that he intends to eventually resolve this debt. (Tr at 37-39.) Applicant submitted a post-hearing exhibit, establishing that he has engaged the services of a credit consolidation counseling service (CCCS), to help him resolve the unpaid debts listed on the SOR. Applicant represented that by following their plan all of his overdue debts will be satisfied in 24 months. (Exhibit G.) This debt was listed on the CCCS documentation. I find that at this time the full debt is still due and owing, but Applicant has a plan to resolve this debt within 24 months.

1.b. This overdue debt is cited in the SOR in the amount of \$173. Applicant testified that this debt for a medical bill has been paid. (Tr at 39-41.) Exhibit E shows that this debt was paid in full on March 29, 2012. I find that this debt has been resolved.

1.c. This overdue debt is cited in the SOR in the amount of \$53. Applicant testified that this debt has been paid. (Tr at 41.) Exhibit E shows that this debt was paid in full. I find that this debt has been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$1,081. Applicant testified that he was not certain whether or not this debt had been paid. (Tr at 41-43.) The record was kept open to offer any evidence to update the current status of this debt. This debt was listed on the CCCS documentation. (Exhibit G.) I find that at this time the full debt is still due and owing, but Applicant has a plan to resolve this debt within 24 months.

1.e. This overdue debt is cited in the SOR in the amount of \$1,052. Applicant testified that this debt has been paid. (Tr at 43-44.) Exhibit E shows that this debt was paid in full on October 3, 2012. I find that this debt has been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$476. Applicant testified that this debt has been paid. (Tr at 44-45.) Exhibit E shows that this debt was paid in full on May 9, 2012. I find that this debt has been resolved.

1.g. This overdue debt is cited in the SOR in the amount of \$2,540. Applicant testified that this debt for a medical bill has not been paid. He believed that his medical insurance should have paid for this bill, but he has not confirmed this. (Tr at 45-47.) The record was kept open to offer any evidence to update the current status of this debt. This debt was listed on the CCCS documentation. (Exhibit G.) I find that at this time the full debt is still due and owing, but Applicant has a plan to resolve this debt within 24 months.

1.h. This overdue debt is cited in the SOR in the amount of \$1,165. Applicant testified that this debt has been paid. (Tr at 48-49.) Applicant's RSOR attachment 4 shows that this debt was paid in full. I find that this debt has been resolved.

1.i. This overdue debt is cited in the SOR in the amount of \$811. Applicant testified that he had sent a check to this creditor to settle this debt, but he came to realize that the check had never been cashed. He planned to contact the creditor to attempt to resolve this debt and to submit post-hearing evidence to update the current status of this debt. (Tr at 49-50.) This debt was listed on the CCCS documentation. (Exhibit G.) I find that at this time the full debt is still due and owing, but Applicant has a plan to resolve this debt within 24 months.

1.j. This overdue debt is cited in the SOR in the amount of \$6,518. Applicant testified that he has been making payments of \$604 every two weeks for what he believed to be three months on this medical debt. At the time of the hearing, he owed one additional payment of \$385, and the debt would be paid off. (Tr at 50-51.) The record was kept open to allow Applicant to submit evidence to establish the current status of this debt. This debt was not listed on the CCCS documentation, and it appears to be resolved.

1.k. This overdue debt is cited in the SOR in the amount of \$6,628. Applicant testified that this debt for a repossessed vehicle has not been paid, although he indicated that he intends to eventually resolve this debt. (Tr at 52.) This debt was listed on the CCCS documentation. (Exhibit G.) I find that at this time the full debt is still due and owing, but Applicant has a plan to resolve this debt within 24 months.

1.l. Applicant filed a Chapter 7 bankruptcy on or about March 2002. The debts were discharged in December 2002. Applicant testified that he got into financial problems during the 2002 time frame because his wife's son and daughter from a previous marriage came to live with Applicant and his wife, and not only was he then

supporting her two children, but he was also helping to support other members of his wife's family, who lived in another country. (Tr at 55-58.)

1.m. This overdue debt is cited in the SOR in the amount of \$202. Applicant testified that this bill is for a television service that he still has, and he believed that he was current with this creditor. (Tr at 52-53.) Only one of the credit reports submitted, (Exhibit 5), shows that this debt was overdue. The record was kept open to allow Applicant to submit evidence to establish the current status of this debt. Applicant submitted post-hearing Exhibit H, which shows that he has current service from this creditor and is not overdue. I find that this debt is resolved.

1.n. This overdue debt is cited in the SOR in the amount of \$1,174. Applicant testified that this debt for a credit card has not been paid, but the record was kept open to allow Applicant to submit evidence to establish the current status of this debt. (Tr at 54-55.) This debt was listed on the CCCS documentation. (Exhibit G.) I find that at this time the full debt is still due and owing, but Applicant has a plan to resolve this debt within 24 months.

Applicant testified that his current financial difficulties occurred as a result of his sustaining two injuries, a torn ligament in his arm in 2007, and a sprained ankle in 2008, that made him miss work. For his arm he missed three or four weeks, and for his ankle he was off of work for six weeks. His wife was not bringing in any income during this period. (Tr at 58-60.) Finally, his wife's daughter was going to come live with them again with her baby, and one of the vehicles he purchased was to go to her. She was to make the payments, but when she only stayed with them a month, he was stuck making the payments for two vehicles by himself, resulting in the vehicle repossession. (Tr at 60-61.)

Mitigation

Applicant testified that he does not currently have any credit cards, and it is his intention to not have any credit cards in the future. (Tr at 68-69.)

Applicant also submitted evidence showing that he is current on a title loan, and he had paid off other overdue debts that had not been listed on his SOR. (Exhibits I and J.)

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 from his two infirmities that resulted in him missing between nine and ten weeks of work. I find that he has acted responsibly by paying off six of the debts listed on the SOR, and then engaging the services of a CCCS to help him pay off the rest of his debts. Applicant also resolved additional debts that were not listed on the SOR, and he no longer uses credit cards. Therefore, I find that this mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) is also applicable since I find that Applicant has “initiated a good-faith effort” to “resolve debts.” As reviewed above, Applicant has paid six debts, and I find that he has acted reasonably and has a realistic plan to pay off the other additional debts. I find that this mitigating condition is a factor for consideration in this case.

Since Applicant has taken responsible steps to resolve his significant overdue debts, I conclude that 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, 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
Subparagraph 1.a. through 1.n.:	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