



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 -----) ISCR Case No. 11-04139
)
)
 Applicant for Security Clearance)

Appearances

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

May 29, 2012

Decision

MOGUL, Martin H., Administrative Judge:

On December 6, 2011, 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 January 18, 2012, 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 first notice of hearing on February 29, 2011, for the hearing to be held on March 16, 2012. At the request of Department Counsel the hearing was continued to March 29, 2012, and a second notice of hearing was issued on March 14, 2012. Thereafter at Department Counsel's request the hearing was continued a second time. On March 16, 2012, a third notice of hearing was issued, and I convened the hearing as scheduled on April 3, 2012. The

Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through D at the time of hearing, which were also received without objection. DOHA received the transcript of the hearing (Tr) on April 12, 2012. I granted Applicant's request to keep the record open until April 20, 2012, to submit additional documents. Additional documents were timely received and identified as Exhibits E through H, and they have been 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 upon due consideration of that evidence, I make the following findings of fact:

Applicant is 29 years old. He is not married, and he has one daughter. Applicant served in the United States Army from 2001 to 2005, and he received an Honorable Discharge. Applicant is employed by a defense contractor, and he is seeking a DoD security clearance in connection with future employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists four allegations (1.a. through d.) regarding overdue debts under Adjudicative Guideline F. In his RSOR, Applicant admitted all of the debts. 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 \$493. At the hearing, Applicant testified that this debt is still unpaid. (Tr at 30-31.) Among the post hearing documents, Applicant submitted a letter from the creditor of this debt showing that Applicant made a payment of \$250, and that the debt is settled in full. (Exhibit E.) I find that this debt is now resolved.

1.b. This overdue debt is cited in the SOR in the amount of \$6,910. Applicant testified that he has not yet paid this debt, but the creditor has agreed to a plan where Applicant will pay \$4,500 down by April 13, 2012, and then 10 additional monthly payments of \$170. Applicant testified that this is a payment plan for both debts to the same creditor, 1.b. and 1.c., below. (Tr at 31-35.)

However, the post hearing documents show that there are two separate payment plans for the two debts. Exhibit F includes two letters from the credit collection agency for the two debts listed as 1.b. and 1.c. The letter regarding this debt shows a payment schedule of \$1,507.65 to be paid by April 13, 2012, and 11 additional monthly payments of \$51.26. Exhibit G shows that Applicant made a payment of \$1,507.65 on April 13, 2012. I find that Applicant is now in the process of, and has taken a significant step towards, resolving this debt.

1.c. This overdue debt is cited in the SOR to the same creditor as 1.b., above, in the amount of \$13,785. (Tr at 35-36.) The letter for this debt shows a required first

payment of \$2,992.56 is required by April 13, 2012, with 11 additional payments of \$104.07. (Exhibit F.) Exhibit G shows that Applicant also made a payment of \$2,992.56 on April 13, 2012. I find that Applicant is now in the process of, and has taken a significant step towards, resolving this debt.

1.d. This overdue debt is cited in the SOR in the amount of \$6,818. Applicant testified that he has not made any payment on this debt, but he is in the process of engaging the services of a debt counseling company to resolve this debt. (Tr at 38-39.) I find that this debt has not yet been resolved.

Applicant explained that his financial problems occurred as a result of being unemployed for approximately seven months. He averred that with the exception of the four debts listed on the SOR, he is not overdue on any other debts. (Tr at 43.)

Mitigation

Applicant submitted two positive character letters. One was from an individual who represented herself as the CEO of a foundation, and she is also a parent to friends of the Applicant. Department Counsel objected to this letter since it was not signed nor is there a sender address on the email. I have allowed this letter into evidence, but have considered the basis for Department Counsel's objection while reviewing the letter. The writer of this letter described Applicant as "very trustworthy, honest and caring in personal and professional capacity." (Exhibit H.) I also considered Applicant's DD Form 214 that indicated Applicant received a number of medals and awards during his time in the United States Army. (Exhibit 2.)

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 unemployment.

At this time, I find that Applicant has acted responsibly regarding these debts. Of the 4 debts listed on the SOR, Applicant has completely resolved one and has made significant progress in resolving two others. He has also engaged the services of a debt counseling company to help him settle the final debt.

Similarly, I find that 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 a factor for consideration in this case.

I conclude that Applicant has significantly reduced his overdue debt, and 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, I find that the record evidence leaves me with no 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 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. - 1.d.: 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