



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



In the matter of:)	
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)	ISCR Case No. 11-04328
)	
Applicant for Security Clearance)	

Appearances

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

April 4, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On April 13, 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 25, 2012, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on August 7, 2012. DOHA issued a notice of hearing on January 3, 2013, and the hearing was convened as scheduled on January 29, 2013. The Government offered Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through W; A through D, F through Q, and S through W were admitted without objection. Three additional witnesses testified on behalf of Applicant. The record was kept open until February 12, 2013, to allow Applicant to submit additional evidence. The documents that were timely received have been identified and

entered into evidence without objection as Exhibits X and Y. DOHA received the transcript of the hearing (Tr) on February 12, 2013. 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 51 years old. He was married in 1994, but since 1999, he and his wife live apart. He has one daughter. Applicant served in the United States Navy from July 21, 1980 through July 31, 2004, and he received an Honorable Discharge. He earned a Bachelor of Arts degree in September 2012. Applicant has been employed by his current employer, a defense contractor, since 2004, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 3 allegations (1.a. through c.) 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 as a medical account in the amount of \$9,332. Based on the evidence introduced at the hearing, the SOR was amended to show that this was a credit card debt. Applicant testified that he has been making payment of \$100 a month since February 2012 toward this debt, but he has not been informed by the creditor how much is still owing. (Tr at 50-52, 57.) Exhibit T includes copies of 10 checks from Applicant to this creditor.

1.b. This overdue debt is cited in the SOR in the amount of \$10,833. Applicant testified that he has been making payment of \$100 a month since February 2012 toward this debt. Thereafter he was given the opportunity to settle the debt if he paid an additional \$1,500. Applicant averred that he did pay the \$1,500, and the debt has been resolved. (Tr at 53-55.) Exhibit Y includes a letter from the current creditor of this debt, dated January 31, 2013, stating that this account is considered settled. I find that Applicant has resolved this debt.

1.c. This overdue debt is cited in the SOR in the amount of \$15,031. Applicant testified that he has paid \$6,500 toward this debt; \$150 a month for 10 months, and then one large payment of \$5,000, and the debt has settled. (Tr at 55-56.) Exhibit B is a letter from the current creditor of this debt, dated January 18, 2013, stating that this debt was settled in full in the amount of \$6,650. I find that this debt has been resolved.

Applicant testified that the three debts listed on the SOR were incurred by his wife, since the time that they were estranged, and they were done without his knowledge while he was serving overseas. He learned of these debts in 2008, and requested that his wife pay them as she had been the one who had incurred them. (Tr at 40-41.) Applicant introduced a letter from his estranged wife, dated January 30, 2013. She confirms that she opened three credit cards, that are the basis of the three debts listed on the SOR, in 2001 or 2002 in her husband's name without his knowledge and while he was deployed overseas. She also wrote that she stopped paying the creditors of the credit cards, and although she filed bankruptcy in 2005, these debts were not listed on her bankruptcy. (Exhibit X.)

Approximately a year ago, when Applicant determined that his wife was not going to fulfill her obligation to resolve the debts, he contacted all three creditors and began paying the debts as per payment plans he made with each creditor. (Tr at 47.) As mentioned previously, two of the debts have been resolved, and Applicant is making regular payments toward the third debt. Applicant also testified that, with the exception of the three debts incurred by his wife, he has not previously been, nor is he currently, overdue on any other debts. (Tr at 57.)

Mitigation

Applicant submitted a current personal financial statement, which shows that he earns \$9,571 net income and has a net monthly remainder after expenses of \$3,010. (Exhibit G.) Exhibit A is a letter from Applicant's landlord for the past eight years, a retired Army Lieutenant Colonel. He writes Applicant has never been late in making a rent payment, and he is very conscientious in caring for the property that he occupies. Applicant also testified that he has put a "credit lock" on his finances so that no account could ever be opened again by his estranged wife without his being aware of it. (Tr at 66.)

As stated above, three witnesses also testified on behalf of Applicant. The first witness rents a room from Applicant, and he has known Applicant since 2003 when they both served in the Navy. The witness, who served for 20 years in the Navy believes that Applicant is trustworthy. (Tr at 81-91.) The second witness to testify was Applicant's immediate supervisor and friend, a retired Lieutenant Commander in the Navy, who has known Applicant for 10 years. He described Applicant as a loyal individual, and he believes Applicant should maintain his security clearance. (Tr at 92-101.) The final witness was Applicant's daughter, who is 17 years of age and just entered college. Applicant's daughter confirmed that her mother had filed for bankruptcy two times, and her instability has led to several attempts at suicide. She also confirmed that her mother has had a problem with alcohol and drugs. Finally, she averred that her father has supported her financially and been a stable influence in her life. (Tr at 102-110.)

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 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's financial problems resulted because of debts incurred by his estranged wife, without his knowledge, and while he was deployed overseas in the Navy. I find that he has acted responsibly by paying off two of the debts listed on the SOR, and continually making payments toward the other debt per the plan he had with the creditor. 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 off two of the debts, and I find that he has acted reasonably and has a realistic plan to pay off the other additional debt. I find that this mitigating condition is a factor for consideration in this case.

Since Applicant has taken responsible steps to resolve his 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, together with his long service in the United States Navy, and the strong support he has received, 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.c.: 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