



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 11-04625
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)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

September 12, 2012

Decision

MOGUL, Martin H., Administrative Judge:

On February 8, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) 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 14, 2011, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. (Item 2.) On May 23, 2012, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered 11 documentary exhibits. (Items 1-11.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on July 5, 2012. Applicant submitted a

one page letter, which has been entered into evidence without objection as Item A. The case was assigned to this Administrative Judge on July 20, 2012.

Based upon a review of the pleadings and exhibits, 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 additional document, and the FORM, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 42 years old. He is married, and he and his wife have two children. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists 13 allegations (1.a. through 1.m.) regarding financial difficulties under Adjudicative Guideline F. All of the debts were listed in one or both of the November 2010 and November 2011 credit reports. (Items 6 and 10.) The debts and the bankruptcy 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 for a collection account in the amount of \$135. In his RSOR, Applicant admitted this SOR allegation and that this debt has not been paid. I do not find that this debt has been resolved.

1.b. This overdue debt is cited in the SOR for a collection account in the amount of \$750. In his RSOR, Applicant admitted this SOR allegation and that this debt has not been paid. I do not find that this debt has been resolved.

1.c. This overdue debt is cited in the SOR for a collection account in the amount of \$492. In his RSOR, Applicant admitted this SOR allegation and that this debt has not been paid. I do not find that this debt has been resolved.

1.d. This overdue debt is cited in the SOR for a collection account in the amount of \$5,786. In his RSOR, Applicant admitted this SOR allegation. He wrote that this debt was from a loan used to pay off some of his other, older debts, and that he is just 15 days behind on this debt. In the FORM, Department Counsel conceded that this debt was not delinquent and should not have been alleged. I do not find that this debt is overdue.

1.e. This overdue debt is cited in the SOR for a collection account in the amount of \$662. In his RSOR, Applicant denied this SOR allegation and wrote that this debt was paid with the proceeds of the loan from 1.d., above. Applicant offered no evidence to support his contention that this debt had been resolved. In the FORM, Department

Counsel addressed the fact that no evidence was offered to prove that this debt and several other debts were solved, and Applicant was given the opportunity to submit documentation to establish that the debts had been paid. No post FORM evidence was submitted to show that this debt was paid. I do not find that this debt has been resolved.

1.f. This overdue debt is cited in the SOR for a charged off account in the amount of \$20,000. In his RSOR, Applicant admitted this SOR allegation and that this debt has not been paid. I do not find that this debt has been resolved.

1.g. This overdue debt is cited in the SOR for a collection account in the amount of \$924. In his RSOR, Applicant denied this SOR allegation and wrote that this debt was paid with the proceeds of the loan from 1.d., above. No evidence was submitted to show that this debt was paid. I do not find that this debt has been resolved.

1.h. This overdue debt is cited in the SOR for a collection account in the amount of \$267. In his RSOR, Applicant denied this SOR allegation and wrote that this debt was paid with the proceeds of the loan from 1.d., above. No evidence was submitted to show that this debt was paid. I do not find that this debt has been resolved.

1.i. This overdue debt is cited in the SOR for a collection account in the amount of \$991. In his RSOR, Applicant denied this SOR allegation and wrote that this debt was paid with the proceeds of the loan from 1.d., above. No evidence was submitted to show that this debt was paid. I do not find that this debt has been resolved.

1.j. This overdue debt is cited in the SOR for a medical collection account in the amount of \$90. In his RSOR, Applicant denied this SOR allegation and wrote that this debt was paid with the proceeds of the loan from 1.d., above. No evidence was submitted to show that this debt was paid. I do not find that this debt has been resolved.

1.k. This overdue debt is cited in the SOR for a medical collection account in the amount of \$41. In his RSOR, Applicant denied this SOR allegation and wrote that this debt was paid with the proceeds of the loan from 1.d., above. No evidence was submitted to show that this debt was paid. I do not find that this debt has been resolved.

1.l. This overdue debt is cited in the SOR for a collection account in the amount of \$12,605. In his RSOR, Applicant admitted this SOR allegation and that this debt has not been paid. I do not find that this debt has been resolved.

1.m. Applicant filed a Chapter 7 bankruptcy on or about June 2001. The bankruptcy was discharged in October 2001.

Applicant explained the reason for his current financial difficulties was that he was laid off for six months in 2010, that he had to move on three occasions, and that his wife has been out of work for eight months.

In Item A, Applicant indicated that his monthly net income was \$3,924, because his monthly salary had been reduced by \$1,200. His monthly bills totaled \$3,896,

leaving him a remainder of only \$28 a month, to be used to purchase clothes and haircuts for his family, and for vehicle repair. Applicant offered no evidence that with his financial situation he would be able to resolve his past overdue debts or stay current with his present debts, if any additional or unexpected bills should arise.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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 reviewed above, Applicant explained his financial difficulties occurred because he was laid off for six months in 2010, that he had to move on three occasions, and that his wife has been out of work for eight months. The evidence is clear that Applicant lost his job due to circumstances beyond his control.

I also find sufficient evidence to establish that Applicant has acted responsibly by seeking new employment, first on a short term basis and then for longer employment in his current position. (Item 5.) A review of the credit reports also reveals that Applicant has resolved some of his overdue debts, although not the debts that were listed on the SOR. Therefore, I find that this mitigating condition is a factor for consideration in this case.

Additionally, I find that AG ¶ 20(d) is applicable, since Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” although the debts that have been proven to be resolved were not the debts listed on the SOR. I do not find that any other mitigating condition applies to this case.

However, despite the fact that these two mitigating conditions are applicable, I cannot conclude that Applicant has mitigated the Financial Consideration concerns because he has not submitted evidence to show that any of the SOR debts were resolved, with the exception of 1.d. Additionally, Applicant's post FORM submission shows that he has virtually no monthly remainder after his bills have been paid (Item A), and since no current financial plan was submitted, I cannot conclude that Applicant will be able to pay off his past debts or keep up to date on his current debts and expenses, especially if any new or unexpected debts are incurred.

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. I also considered that the evidence has not established that Applicant will be able to resolve the past-due debts listed on the SOR or stay current with his recent debts. Therefore, 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 concept. For all these reasons, I conclude Applicant has not mitigated the security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraphs 1.e. - 1.m.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge