



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



In the matter of:)	
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)	ISCR Case No. 11-05922
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

March 04, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On June 1, 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. (Item 1.) 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 July 12, 2012, 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 4.) On October 31, 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 nine documentary exhibits. (Items 1-9.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on December 8, 2012. Applicant submitted a response, which has been identified and entered into evidence without objection as Item A. The case was assigned to this Administrative Judge on December

26, 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 its attached documents, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 32 years old. He 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 nine allegations (1.a. through 1.i.) regarding financial difficulties, specifically overdue debts totaling more than \$287,000, under Adjudicative Guideline F. The debts 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 \$754. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

Applicant also wrote in his RSOR, "due to economy I can no longer live within my means. . . At the present time I cannot afford [sic] my debt." He explained further that this is why he is applying for the job, for which he needs a security clearance. (Item 4.)

1.b. This overdue debt is cited in the SOR in the amount of \$295. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.c. This overdue debt is cited in the SOR in the amount of \$1,897. Applicant admitted this SOR allegation in his RSOR. (Item 4.) At this point, I find that this debt is still due and owing.

1.d. This overdue debt is cited in the SOR in the amount of \$1,566. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.e. This overdue debt is cited in the SOR in the amount of \$272,000. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.f. This overdue debt is cited in the SOR in the amount of \$10,450. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.g. This overdue debt is cited in the SOR in the amount of \$141. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.h. This overdue debt is cited in the SOR in the amount of \$678. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

1.i. This overdue debt is cited in the SOR in the amount of \$164. Applicant admitted this SOR allegation in his RSOR. (Item 4.) I find that this debt is still due and owing.

In his responses to interrogatories, Applicant indicated that his employment hours were significantly decreased in October 2009, due to the economy. In February 2010, he was laid off, and he could not pay his mortgage or other debts while he collected unemployment compensation benefits. Applicant contended that he has twice attempted to modify his mortgage, but he was refused. He also has attempted a short sale of his home, but that has yet to be successful. (Item 6.) Finally, no evidence was submitted to show that Applicant has sought or received any financial counseling or assistance from a credit counseling service.

In his post FORM reply, Applicant wrote that he,

takes full responsibility for my situation.” He further wrote, “It is understood that financially I made some decisions that I will address as soon as financially possible. As before mentioned at this time I am unable to address these financial circumstances due to approximately 50% cut in pay. It should also be understood that I have every intention of settling my debts as soon as possible and in an appropriate manner. (Item A.)

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, before 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.” Applicant’s unemployment and underemployment make this mitigation condition potentially applicable. However, since there is no evidence that Applicant has made any attempt to resolve his overdue debts, including contacting the creditors or paying off the two debts that total less than \$200 each, I do not find that Applicant has acted responsibly. Therefore, this mitigating condition is not applicable in this case.

Additionally, since Applicant has not sought any financial counseling, AG ¶ 20(c) is not applicable, and 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.” Finally, I do not find that any other mitigating condition applies to this case. Therefore, I find Guideline F against Applicant.

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 the lack of evidence to establish that Applicant has made any attempt to resolve the past-due debts listed on the SOR, 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 under the whole-person concept.

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.i.: 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