



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-07280
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

March 04, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On August 1, 2012, the Department of Defense (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; 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 September 13, 2012, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. I received the case assignment on November 2, 2012. DOHA issued a notice of hearing on November 29, 2012, and the hearing was convened as scheduled on December 6, 2012. The Government offered Exhibits 1 through 8, 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 December 20, 2012, to allow Applicant to submit additional evidence. Applicant then requested the record remain open until January 14, 2013, to allow him to submit additional evidence. The documents that were

timely received have been identified and entered into evidence collectively without objection as Exhibit G. DOHA received the transcript of the hearing (Tr) on December 14, 2012. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, 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 documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 30 years old. He is married, and he has three 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 six allegations (1.a. through f.) 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 \$19,086. Applicant denied this allegation in his RSOR, contending that a "credit cleaning company" had cleared this debt, so the debt was no longer owed. At the hearing, Applicant testified that he has made no payment toward this debt for a repossessed vehicle. (Tr at 29-32.) Applicant contended that he had letters from each creditor telling him the status of each debt. (Tr at 38-39.) The record was kept open to allow him to submit the letters from each creditor, but no letters were submitted. While these debts may have fallen off the credit report, no evidence was introduced to establish that the debts have been satisfied. I find that this debt is still due and owing and has not been resolved.

1.b. This overdue debt is cited in the SOR in the amount of \$15,415. Applicant denied this allegation in his RSOR, contending that a "credit cleaning company" had cleared this debt, so the debt was no longer owed. At the hearing, Applicant testified that he believed that this debt was for the same repossessed vehicle listed in 1.a., above. (Tr at 32-33.) I find that this is a duplicate debt of 1.a., above, and is only owed once.

1.c. This overdue debt is cited in the SOR in the amount of \$1,611. Applicant denied this allegation in his RSOR, contending that a "credit cleaning company" had cleared this debt, so the debt was no longer owed. At the hearing, Applicant testified that he has made no payments toward this credit card debt. (Tr at 33-34.) I find that this debt is still due and owing and has not been resolved.

1.d. This overdue debt is cited in the SOR in the amount of \$334. Applicant denied this allegation in his RSOR, contending that a "credit cleaning company" had cleared this debt, so the debt was no longer owed. At the hearing, Applicant testified

that he has made no payments toward this telephone service debt. (Tr at 34-35.) I find that this debt is still due and owing and has not been resolved.

1.e. This overdue debt is cited in the SOR in the amount of \$193. Applicant denied this allegation in his RSOR, contending that a “credit cleaning company” had cleared this debt, so the debt was no longer owed. At the hearing, Applicant testified that he has made no payments toward this debt for emergency room medical treatment. (Tr at 35-36.) I find that this debt is still due and owing and has not been resolved.

1.f. This overdue debt is cited in the SOR in the amount of \$86. Applicant admitted this allegation in his RSOR, and he wrote that he would be paying this debt. At the hearing, Applicant testified that he had not yet paid this electric bill, despite his indicating on his RSOR of September 13, 2012, that he planned to pay the bill. (Tr at 36-37.) When Applicant was asked why he had not at least resolved this minimal overdue bill, he stated, “it actually had slipped my mind for the last two months.”

The record was left open to give Applicant an opportunity to show that he had paid this bill, but none of his post-hearing documents showed that this bill had been paid. I find that this debt is still due and owing and has not been resolved.

Applicant testified that his financial problems occurred when he was between the ages of 17 and 20, in approximately 2002 or 2003, and he was young and inexperienced in handling money. (Tr at 28-31.) Applicant conceded that from that period in 2002/2003, until he hired the credit cleaning company in 2011 after the security clearance process began, Applicant took no action to attempt to resolve these debts. (Tr at 53.)

Applicant testified that he is current on his recent debts including his rent. Applicant and his wife currently own two vehicles, and in 2008, after he had incurred the debts listed on the SOR, he purchased a motorcycle for \$14,000.

Mitigation

Applicant submitted a letter from the General Manager of his current employer, dated October 7, 2011, congratulating Applicant for a promotion and raise that he received. He also submitted some performance evaluations from his current employer, which generally rated him as a 3 in most categories, on a scale of 1 to 5. Finally, he submitted letters of commendation for his positive employment. (Exhibit G.)

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 when he was young and inexperienced. I do not find that the conditions that caused the financial difficulties were beyond his control. Also, since he has not paid off any of the overdue debts, I do not find that he has acted responsibly. Therefore, I find that this mitigating condition is not a factor for consideration in this case.

AG ¶ 20(d) is also not applicable since Applicant has not "initiated a good-faith effort" to "resolve debts." Applicant has not paid off or reduced any of his overdue debts, even the minimal debt of \$86. I do not find that Applicant has acted reasonably or has a realistic plan to pay off his more significant debts. I find that this mitigating condition is not a factor for consideration in this case. Finally, no other mitigating conditions are applicable in this case.

Until Applicant begins to resolve his overdue debts, I conclude that he has not 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 do not apply, 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., and 1.c. through 1.f.:	Against Applicant
Subparagraph 1.b.:	For 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